

BEFORE THE COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THE MARYLAND-  
WASHINGTON REGIONAL DISTRICT IN  
MONTGOMERY COUNTY, MARYLAND

Office of Zoning and Administrative Hearings  
Stella B. Werner Office Building  
Rockville, Maryland 20850  
240-777-6660

IN THE MATTER OF:

CSAAC (Community Services for Autistic  
Adults and Children, Inc.)

Applicant

Frank G. Bossong, IV  
Matthew Hurson, Member, Board of  
Directors, CSAAC  
Scott Knudson  
Catherine Roland  
Edward Papazian  
Gary Unterberg

For the Applicant

C. Robert Dalrymple, Esquire

Attorney for the Applicant

\*\*\*\*\*

Steve Gemeny  
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Angela Adkins  
Marilyn Sideberg

Community Members in Support

\*\*\*\*\*

Ursell Peterson  
Mary Jo Shapiro  
Bonnie Wahiba and Saul Schepartz,  
on behalf of residents of East Village and  
East Gate in Montgomery Village

In Opposition to the Application

\*\*\*\*\*

Before: Françoise M. Carrier, Hearing Examiner  
Philip J. Tierney, Hearing Examiner

Development Plan Amendment (DPA)  
No. 01-4

HEARING EXAMINERS' REPORT AND RECOMMENDATION

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## I. SUMMARY

The applicant is a private, non-profit provider of educational and other support services to children and adults with autism. The applicant currently operates out of the former Broom Middle School, owned by Montgomery County, in Rockville. To relieve overcrowding and provide a more permanent location for its headquarters, the applicant seeks to construct a building on the subject property that will house all of the administrative functions of the organization. The proposed facility would be approximately 36,000 square feet in size.

The evidence supports a finding that the proposed development satisfies all the requirements of the Town Sector Zone, meets the requirements for a DPA and bears sufficient relationship to the public interest to justify approval. The main point of contention is the opposition's belief that the proposed administrative headquarters would amount to a commercial office use that is inappropriate for a residential neighborhood. It seems that the opposition participating in this case opposes *any* office or commercial use at this site, regardless of the nature of the use, the site design, or the direct impact on public facilities. Their opposition is based in part on a concern that construction of an office building at this location could open the door to other, more intrusive commercial uses in the future, in the event that CSAAC decides to move elsewhere.

The applicant addressed the concern with a binding element to the DPA that limits any use of the site to the proposed use. Given this revision to the DPA, any future use at this location would be subject to further review under the DPA process and would require approval by the District Council. Based on the applicant's showing of compliance with all the requirements of the zoning ordinance, we recommend approval of the DPA as revised.

## II. STATEMENT OF THE CASE

Application No. DPA 01-4, filed February 5, 2001, seeks to amend the approved land use plan for Montgomery Village in the Town Sector Zone, to remove a school designation for a 10.76-acre

parcel of undeveloped land and allow construction of the applicant's administrative headquarters building on the site. The property is located north of the intersection of Lewisberry Drive and East Village Avenue in East Village, Section 12, which is part of Area III-K of the Montgomery Village Town Sector Plan. The property was reserved as a potential school site when Montgomery Village was developed in the mid-1960s, and is designated on the approved land use plan as a potential public school site. Montgomery County Public Schools has now determined that it will not need this site for public school purposes.

Technical Staff of the Maryland-National Capital Park and Planning Commission (MNCPPC) reviewed CSAAC's application and, in a report dated September 27, 2001, recommended approval of the Development Plan Amendment (DPA) and accompanying Supplementary Plan. The Montgomery County Planning Board (Planning Board) considered the matter and, in a memorandum dated October 8, 2001, approved the Supplementary Plan and recommended approval of the DPA.<sup>1</sup>

Pursuant to Montgomery County Code § 59-D-1.74(d), a hearing examiner must conduct a public hearing concerning a proposed DPA if there is any opposition to the application. The record in this case reveals substantial participation by citizens, some in support of the application and some in opposition. Accordingly, a public hearing was conducted on October 24, 2001, at which time evidence was presented both in favor of and in opposition to the application. The public hearing reconvened on November 5, 2001 and was concluded that day, at which time the record was closed.

### **III. BACKGROUND FACTS**

For the convenience of the reader, the facts are summarized by subject matter. Where there are conflicts in the evidence, these conflicts are resolved under the preponderance of evidence test.

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<sup>1</sup> Under Montgomery County Code § 59-D-1.3(g), the Supplementary Plan must be approved by the Planning Board in the course of its recommendation on a development plan amendment. This Supplementary Plan may subsequently be revised in the process of subdivision review and approval or site plan review and approval, subject to certain requirements stated in § 59-D-1.3(g).

### **A.     *The Subject Property***

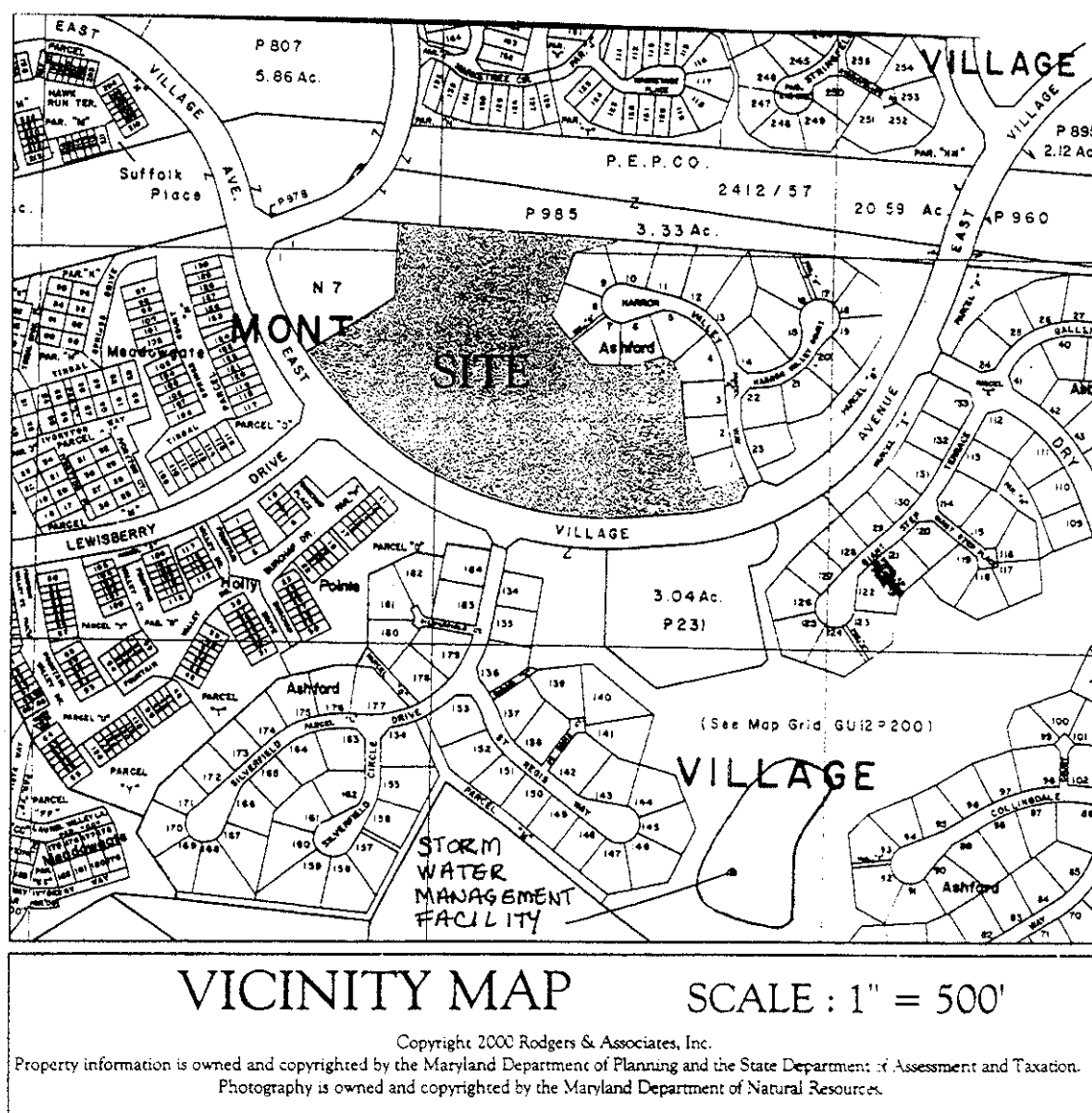
The subject property is located on East Village Avenue in Montgomery Village, north of the intersection of Lewisberry Drive and East Village Avenue, east of Harron Valley Way and west of Fulks Farm Road. This location is in East Village, Section 12, which is part of Area III-K of the Montgomery Village Town Sector Plan. The irregularly shaped property is comprised of 10.76 acres of land and has approximately 1,140 feet of frontage along East Village Avenue. The developer of Montgomery Village, Kettler Brothers, Inc., once used the site as a landscape staging area, supplying trees for the common areas and neighborhoods of Montgomery Village. Kettler Brothers closed the tree farm a few years ago and moved the remaining trees to the perimeter of the property, providing partial screening for adjacent residences. The property now is an open field dominated by tall grass. A single large tree located in the center of the property, a mockernut hickory measuring 28" in diameter at breast height, is considered to be a significant natural specimen.

Evergreen trees ranging in height from 8' to 20' are located along the north, east, and west property boundaries. Along the east property line, the trees are located on top of a berm and provide fairly effective screening for the abutting residences, although some gaps remain. Existing trees along the west and north property lines are too sparse to serve as a meaningful buffer. A paved pedestrian/bicycle pathway meanders along the frontage with East Village Avenue. Two underpasses connect this pathway to the south side of East Village Avenue.

### **B.     *The Surrounding Area***

The surrounding area is zoned Town Sector and is predominantly residential in character. Residential development is medium density with five to seven dwelling units per acre. Adjoining the subject property to the north is a PEPCO transmission line right-of-way. Immediately to the north of the transmission line is a single-family residential neighborhood. Adjoining to the east is a single-family

residential neighborhood of 23 homes flanking Harron Valley Way. Ten residences in this development share a boundary with the subject property, with their backyards overlooking the site. Montgomery Village Avenue forms the southern boundary of the site. South of the site, immediately across Montgomery Village Avenue, are two town house communities, a single-family residential neighborhood along Silverfield Drive, and the DeSimon Recreation Area, which has a tot lot and other facilities. Adjoining the subject property to the west on Fulks Farm Road is a Montessori School, which is a one-and-a-half story pre-school facility. Other uses in the vicinity include the Lake Marion Community Center. Features immediately surrounding the property can be seen on the Vicinity Map reproduced below, which was excerpted from Exhibit 4.



### **C. The Master Plan**

The subject property is located within the Airpark District of the *1985 Approved and Adopted Gaithersburg Vicinity Master Plan* (the Master Plan). The Master Plan was not introduced as an exhibit of record but was cited by both sides, and the examiners take official notice of it. The Master Plan places the property in Analysis Area 53 and recommends medium-density residential use and Town Sector zoning. See Master Plan at 43-46, Fig. 14-16. The subject property is classified under the Town Sector Zone in accordance with the Master Plan. It was not studied during the 1985 Master Plan process and, therefore, reflects the land use and zoning set forth in the *1971 Gaithersburg Vicinity Master Plan*. The Town Sector Zone was confirmed in 1986 as part of the *Gaithersburg Vicinity Master Plan* Sectional Map Amendment.

In addition, the Master Plan designates the subject property as a future elementary school site.<sup>2</sup> This recommendation was based on Montgomery County Public Schools' (MCPS) 15-year Comprehensive Plan for Education Facilities. MCPS demographic projections showed a continued decline in the school-age population in Montgomery County as a whole throughout the 1980's. These projections were consistent with the Planning Board's growth forecast model. Based on these projections, the planned number of school sites indicated on the 1985 Master Plan Land Use Plan Map had been significantly reduced from the *1971 Gaithersburg Vicinity Master Plan*.

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<sup>2</sup> The Land Use Plan published with the Master Plan included a potential elementary school as a floating site in the immediate vicinity of the subject property. Potential school sites often are shown as floating sites at the time a Master Plan is prepared, with the exact location to be determined at subdivision or development plan approval. In this case, the potential elementary school site was specifically tied to the subject property when the original Land Use Plan for Montgomery Village was approved (see Ex. 2). The specific designation first appeared on the Montgomery Village Land Use Plan, but it was in effect carrying out a Master Plan designation and should be treated as such. See *Gaithersburg Vicinity Master Plan Land Use Plan*, January 1985; *Montgomery Village Land Use Plan* (Ex. 2).

The Master Plan also states that because schools provide important community recreation facilities, when a school site is declared surplus its suitability for a local-use park should be given serious consideration. Additionally, as fewer schools are being constructed, there is a greater demand for parks to provide public, active recreation facilities.

The Master Plan anticipates the possibility that property reserved for school use may ultimately become available for other development. It states specifically that "it is important that at least a portion of each undeveloped school site in Montgomery Village be transferred to the Montgomery Village Association for field sport recreation, if the site is not needed for school construction." *See* Master Plan at 95.

#### ***D. Zoning and Land Use History***

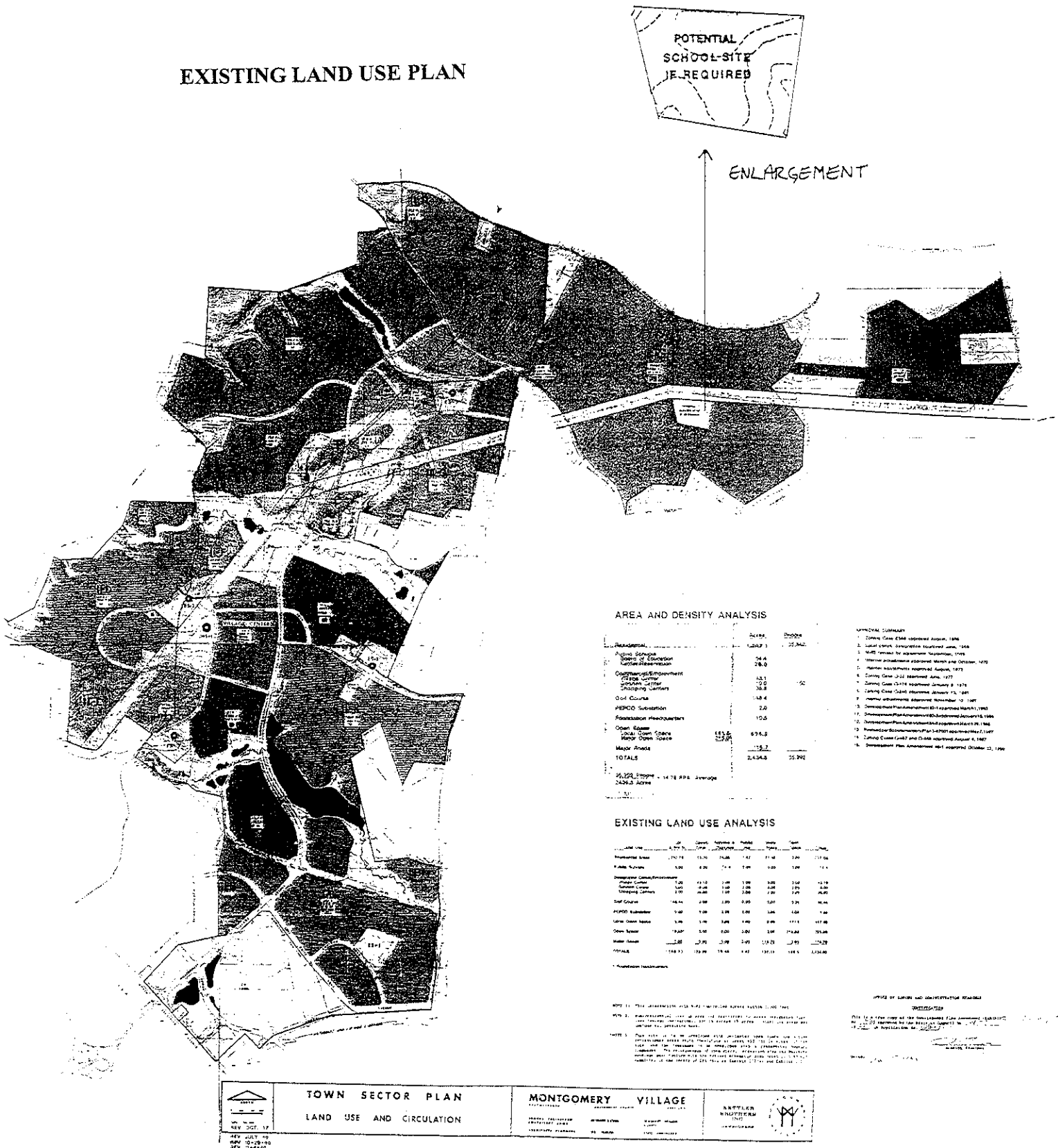
Town Sector zoning was applied to Montgomery Village with the approval of the original Land Use Plan in 1968. Since that time, 15 amendments to the Land Use Plan have been approved, in some cases changing uses and in others incorporating additional land into the Town Sector Zone. The Town Sector Zone is intended to apply to planned communities, and to allow development of towns that will contain residential, commercial, community and industrial facilities. *See* Code § 59-C-7.21. All uses authorized in any zone, by right or special exception, may be similarly authorized in the Town Sector Zone, subject to certain restrictions. *See* Code § 59-C-7.23. The current Land Use Plan for Montgomery Village (Ex. 2), reproduced on the following page, reflects these provisions, as it provides for residential, commercial, open space, transportation, utility and educational uses.

The subject property was designated as a potential school site on the original Montgomery Village Land Use Plan, and that designation has not changed. The property was not dedicated for school use, and title remained with Kettler Brothers until a few years ago, when Kettler Brothers transferred title to the Frank M. Ewing Co., Inc., one of its financial backers. In 1996, MCPS determined that the subject property was no longer needed as a potential school site and relinquished its future claim on the property in



writing, releasing the property for development. The proposed amended Land Use Plan (Exhibit 57), reproduced on the next page, shows the removal of the public school designation from the site and the addition of CSAAC as a “Commercial/Employment” use.

## EXISTING LAND USE PLAN





## Tables excerpted from proposed Land Use Plan, Ex. 57

## AREA AND DENSITY ANALYSIS

	Acres	People
<b>Residential</b>	<b>1297.1</b>	<b>35,842</b>
Public Schools	54.4	
Board of Education	9.24	
Ketter/Reservation		
<b>Commercial/Employment</b>	<b>43.1</b>	<b>150</b>
Village Center	10.0	
Goshen Center	36.8	
Shopping Centers	10.76	
CSAAC	148.4	
Golf Course		
PEPCO Substation	2.0	
Foundation Headquarters	10.5	
<b>Open Space</b>	<b>481.8</b>	<b>696.8</b>
Local Open Space	215.0	
Major Open Space		
<b>Major Roads</b>	<b>115.7</b>	
<b>TOTALS</b>	<b>2,434.8</b>	<b>35,992</b>

35,992 People = 14.78 PPA Average  
2434.8 Acres

## EXISTING LAND USE ANALYSIS

Land Use	Lot & Pry St	Comm/Empl	Schools & Churches	Public Use	Major Roads	Open Space	Totals
Residential Areas	1,210.79	33.30	24.05	7.47	21.45	0.00	1,297.06
Public Schools	0.00	0.00	63.64	0.00	0.00	0.00	74.4
Designated Comm/Employment							
Village Center	0.00	43.10	0.00	0.00	0.00	0.00	43.10
Goshen Center	0.00	10.00	0.00	0.00	0.00	0.00	10.00
Shopping Centers	0.00	36.80	0.00	0.00	0.00	0.00	36.80
CSAAC		10.76					
Golf Course	148.44	0.00	0.00	0.00	0.00	0.00	148.44
PEPCO Substation	0.00	0.00	0.00	2.00	0.00	0.00	2.00
Local Open Space	0.00	0.00	0.00	0.00	0.00	481.8	487.80
Open Space	10.50*	0.00	0.00	0.00	0.00	215.00	225.50
Major Roads	0.00	0.00	0.00	0.00	115.70	0.00	115.70
<b>TOTALS</b>	<b>1,369.73</b>	<b>133.96</b>	<b>87.69</b>	<b>9.47</b>	<b>137.15</b>	<b>696.8</b>	<b>2,434.80</b>

\* Foundation Headquarters

NOTE 1: This intersection with M-83 controlled access within 1,000 feet.

NOTE 2: Non-residential uses in Area 1-B restricted to areas designated Mixed Uses (except recreation), not to exceed 20 acres. Mixed Use areas may include all permitted uses.

NOTE 3: This site is to be developed with perimeter open space and active recreational areas which constitute at least 65% (or 14 acres) of the site, and the remainder to be developed with a residential housing component. The relationship of open space, recreation area and building envelope must conform with the revised schematic plan dated 10/3/90 and submitted in the record of DPA 88-1 as Exhibit 172(a) and Exhibit 172.

## APPROVAL SUMMARY

1. Zoning Case E848 approved August, 1968
2. Local comm. designation approved June, 1969
3. M-83 revised by agreement September, 1969
4. Internal adjustments approved March and October, 1970
5. Internal adjustments approved August, 1972
6. Zoning Case G-33 approved June, 1977
7. Zoning Case G-124 approved January 9, 1979
8. Zoning Case G-240 approved January 13, 1981
9. Internal adjustments approved November 10, 1981
10. Development Plan Amendment 82-1 approved March 1, 1983
11. Development Plan Amendment 83-5 approved January 10, 1984
12. Development Plan Amendment 84-5 approved March 26, 1988
13. Revised per Supplementary Plan 3-87001 approved May 7, 1987
14. Zoning Cases G-467 and G-468 approved August 4, 1987
15. Development Plan Amendment 88-1 approved October 23, 1990
16. Development Plan Amendment 01-4

## PROPOSED BINDING ELEMENTS - CSAAC Application (DPA 01-04)

## Binding Elements Specific to DPA 01-04

1. Improvements and use of the facilities on the property are limited to charitable, philanthropic and educational uses related to the fulfillment of the goals, objectives and purposes of CSAAC as represented in this DPA.
2. Employee trips during the weekday morning peak period (7:00 to 9:00 a.m.) and during the weekday evening peak period (4:00 to 6:00 p.m.) shall be limited to 40.
3. CSAAC shall petition the Montgomery County Planning Board for a waiver of 18 parking spaces from that otherwise required by the Montgomery County Zoning Ordinance. In conjunction with seeking this parking waiver (and the result: reduction in pavement area), CSAAC shall increase the amount of area to be dedicated for open space to a total of approximately 4 acres. This open space shall be offered for dedication to either the East Village Homeowners Association or Montgomery Village Foundation, to be determined by them. It is the express intent that this dedicated open space shall be used for preservation of open space or for recreation purposes to benefit residents of the community, including CSAAC.
4. CSAAC shall reasonably accommodate requests by community members or organization for use of its multi-purpose facility during times which do not conflict with CSAAC operations.
5. CSAAC shall provide landscape and buffer enhancements to the perimeter edges of the property and the parking facility adjoining residential uses.
6. Proper protection measures to preserve the existing hickory tree located in the center of the property shall be approved by M-NCPPC as part of site plan review.
7. Site lighting will be designed and constructed to provide safe on-site conditions but to preclude glare or spillage of light onto adjoining properties or roadways.
8. Areas of the property intended for common and/or quasi-public purposes shall be perpetually maintained by CSAAC (unless or until such areas are dedicated to East Village Homeowners Association or Montgomery Village Foundation).

## OFFICE OF ZONING AND ADMINISTRATION HEARINGS

## CERTIFICATION

This is a true copy of the Development Plan Amendment (Exhibit No. \_\_\_\_\_ approved by the District Council on \_\_\_\_\_, 20\_\_\_\_, in Application No. \_\_\_\_\_.

Hearing Examiner

Dated:

### ***E. The Proposed Development***

CSAAC was established in 1979 to provide community-based residential, education and employment services to children and adults with autism in Montgomery County. CSAAC's services can be broken down into five primary categories: (1) residential – CSAAC maintains and operates<sup>3</sup> 51 group homes for autistic adults in Montgomery County, approximately 28 of which are in or near Montgomery Village, in addition to a vacation home on the Delaware shore; (2) employment support for autistic individuals working for private employers; (3) education in separate classrooms in existing public and private schools; (4) an intensive early intervention program for infants and toddlers with autism; and (5) pre-school and after school respite services for families and individuals with autism. Most of these services are provided off-site, i.e., in homes, schools, and work places, rather than in CSAAC's administrative facility. The State of Maryland and Montgomery County provide most of CSAAC's funding.

CSAAC currently operates out of the former Broom Middle School, owned by Montgomery County, located on Twinbrook Parkway in Rockville. To relieve overcrowding and provide a more permanent location for its headquarters, CSAAC seeks to construct a building on the subject property that will house all of the organization's administrative functions. These include training and staff development, financial and accounting functions, management of employment services, and provision of training and instruction to parents of learning disabled children. From this location CSAAC intends to coordinate and manage its off-site group homes, employment and vocational placements of autistic adults, educational and vocational training placements of autistic children and adolescents, and early behavioral treatment intervention delivered to preschoolers and their parents in their homes.

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<sup>3</sup> CSAAC leases its homes from an affiliated non-profit organization, Residential Continuum, Inc., which owns the properties.

CSAAC proposes construction of a building measuring approximately 36,000 square feet. The building would be long and narrow, with a series of one-story wings joined by a common corridor. The building would have a lobby entrance at one end, and at the other end a multi-purpose room with a 15' to 20' ceiling, reaching to approximately the height of a two-story home. Building functions would include office and support space, work training clinic space, and the multi-purpose room, suitable for training, meetings, seminars, and other activities. An exterior, enclosed play area would be provided for toddlers whose parents are being trained at the facility. The normal hours of operation for the proposed facility would be weekdays from 9:00 a.m. to 5:00 p.m.

The site design includes substantial use of berms and landscaping to buffer the view from surrounding residences of the site as a whole and the parking area planned for the rear of the building. Lighting would be designed to preclude glare or spillage into the adjoining residential neighborhood. Current plans provide for a total of 108 parking spaces, in compliance with code requirements. The applicant intends to seek a partial waiver of those requirements to reduce the number of parking spaces and increase the amount of land available for dedication for public use. Vehicular access would be from a single entrance at an existing break in the median along East Village Avenue, directly opposite Silverfield Drive. Sidewalk connections are planned to the existing pedestrian/bicycle pathway along East Village Avenue, as well as to the two underpasses on the site that connect with the south side of East Village Avenue. The internal vehicular and pedestrian circulation system as proposed is found to be safe, adequate and efficient.

CSAAC anticipates developing its headquarters facility in one or two phases, with a two-year build out time. No dedication of land is required for right-of-way. However, in accordance with the recommendations of the Master Plan, CSAAC intends to dedicate approximately three to four acres of land to the Montgomery Village Foundation and/or East Village Homes Corporation for open space

or recreational use. This land comprises roughly the eastern third of the property, and is identified as "Parcel B" on the Supplementary Plan approved by the Planning Board.

The applicant originally proposed to dedicate three acres of land on the western side of the site as open space, to be owned by either Montgomery Village Foundation or the East Village Home Corporation. The applicant has had discussions with each of these entities, but it has not yet been determined which one should accept the dedication of land. CSAAC intends to allow the two community organizations to decide which group should take title to the land, and how it would be used.<sup>4</sup> The Planning Board requested at its hearing on this DPA that the applicant increase the land area for dedication to four acres. The applicant intends to comply with this request, provided that it can obtain a waiver of the applicable parking requirements that would allow it to reduce the number of parking spaces from 108 to 90, freeing up an additional acre of land.

The exact size and delineation of Parcel B will be determined at site plan review. CSAAC expects to make the dedication prior to or concurrently with recording the subdivision plat for the property, or as soon thereafter as all necessary documentation and agreements with the eventual grantee can be finalized.

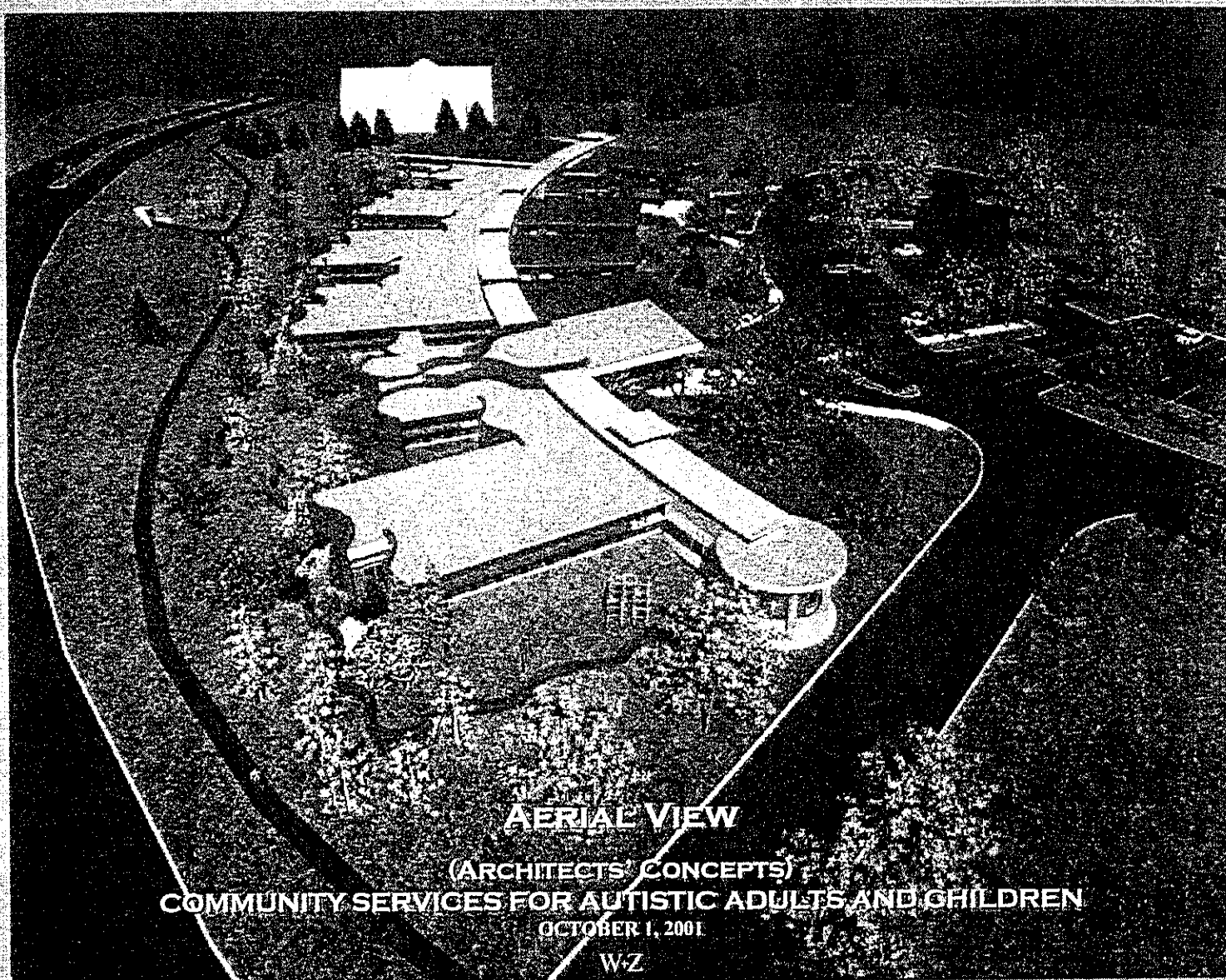
The pages that follow provide graphic depictions of the site plan and building layout:

- Conceptual aerial view (Ex. 48a)
- Conceptual site plan (Ex. 48b)
- Conceptual floor plan (Ex. 48c)
- Approved Supplementary Plan (Ex. 22)
- Alternate Parking Waiver Supplementary Plan for Illustrative Purposes Only (Ex. 56a)<sup>5</sup>

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<sup>4</sup> The applicant's counsel testified that based on preliminary discussions among the applicant, the community groups, and Technical Staff at MNCPPC, there appear to be many different views among area residents as to how the land CSAAC proposes to provide would be used.

<sup>5</sup> This alternative supplementary plan suggests a possible configuration if the parking waiver is approved.



**AERIAL VIEW**

(ARCHITECTS' CONCEPTS)

**COMMUNITY SERVICES FOR AUTISTIC ADULTS AND CHILDREN**

OCTOBER 1, 2001

W-Z

AIA

• WIENCEK + ZAVOS ARCHITECTS, PC •

16077 COMPRINT CIRCLE • GAITHERSBURG • MARYLAND 20877

Telephone 301.948.6220 Facsimile 301.948.2064

Ex 48(a)





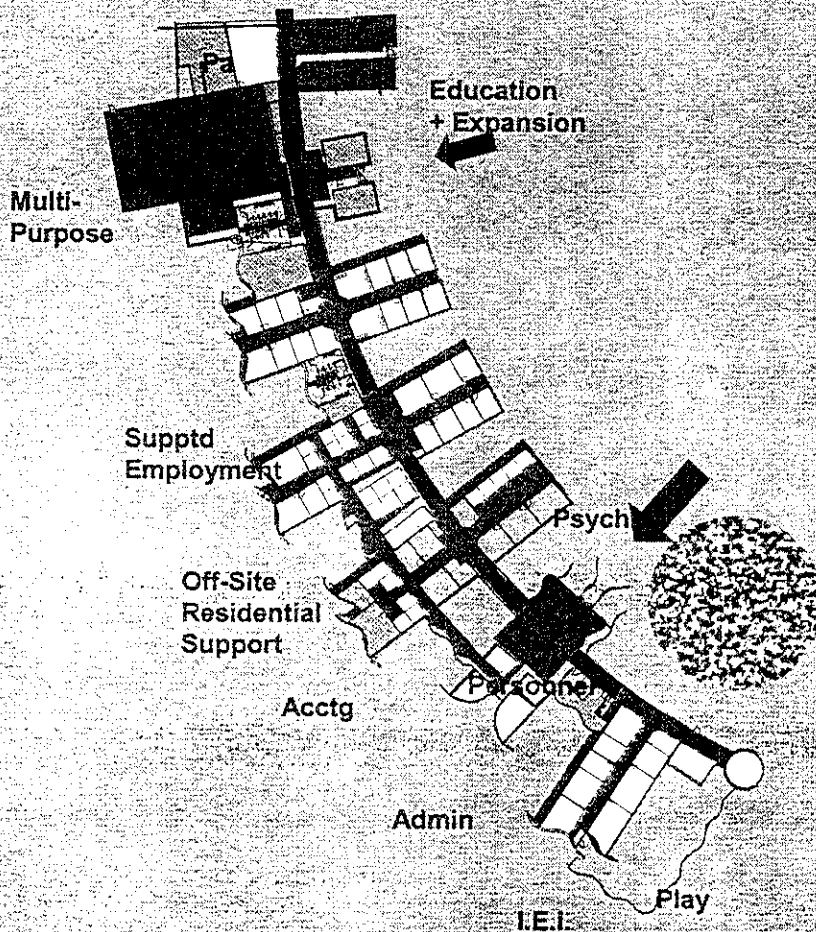
W-Z

AIA

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Ex 48(b)





## FLOOR PLAN

COMMUNITY SERVICES FOR AUTISTIC ADULTS AND CHILDREN  
OCTOBER 1, 2001

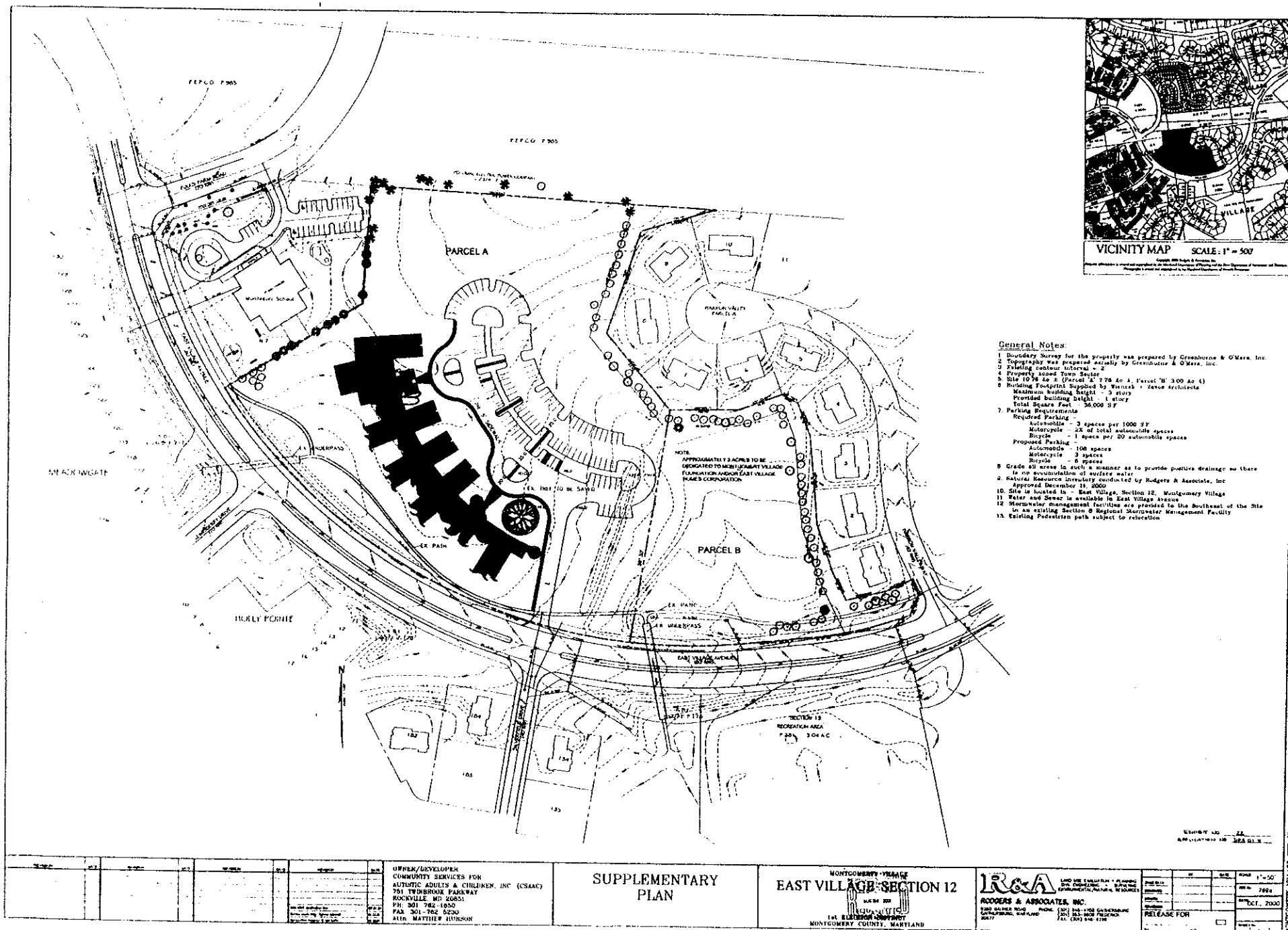


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Ex 48(c)





During the first day of hearing in this case, the applicant offered to respond to community concerns by adding binding elements to address issues such as the nature of the permitted use, landscaping, and the traffic limitation. At the second day of hearing, the applicant's counsel presented a revised proposed Land Use Plan with the binding elements printed on its face. These binding elements appear on Exhibit 57, reproduced in the Background Facts section of this report, and are also excerpted below for ease of reference.

### **PROPOSED BINDING ELEMENTS – CSAAC Application (DPA 01-04)**

#### Binding Elements Specific to DPA 01-04

1. Improvements and use of the facilities on the property are limited to charitable, philanthropic and educational uses related to the fulfillment of the goals, objectives and purposes of CSAAC as represented in this DPA.
2. Employee trips during the weekday morning peak period (7:00 to 9:00 a.m.) and during the weekday evening peak period (4:00 to 6:00 p.m.) shall be limited to 40.
3. CSAAC shall petition the Montgomery County Planning Board for a waiver of 18 parking spaces from that otherwise required by the Montgomery County Zoning Ordinance. In conjunction with seeking this parking waiver (and the resulting reduction in pavement area), CSAAC shall increase the amount of area to be dedicated for open space to a total of approximately 4 acres. This open space shall be offered for dedication to either the East Village Homeowners Association or Montgomery Village Foundation, to be determined by them. It is the express intent that this dedicated open space shall be used for preservation of open space or for recreation purposes to benefit residents of the community, including CSAAC.
4. CSAAC shall reasonably accommodate requests by community members or organization for use of its multi-purpose facility during times which do not conflict with CSAAC operations.
5. CSAAC shall provide landscape and buffer enhancements to the perimeter edges of the property and the parking facility adjoining residential uses.
6. Proper protection measures to preserve the existing hickory tree located in the center of the property shall be approved by M-NCPPC as part of site plan review.
7. Site lighting will be designed and constructed to provide safe on-site conditions but to preclude glare or spillage of light onto adjoining properties or roadways.
8. Areas of the property intended for common and/or quasi-public purposes shall be perpetually maintained by CSAAC (unless or until such areas are dedicated to East Village Homeowners Association or Montgomery Village Foundation).

The binding elements would limit use of the facility to “charitable, philanthropic and educational uses related to the fulfillment of the goals, objectives and purposes of CSAAC”. They also bind the applicant to 40 employee trips during the morning and evening peak hours, and require it to seek a parking waiver that would permit the dedication of four acres of land to public use. Additional binding elements commit the applicant to making the multi-purpose room available to the community, enhancing landscaping and buffering, preventing adverse effects from site lighting, preserving the large hickory tree on the site, and maintaining the areas intended for public use unless and until such property is dedicated to East Village Homeowners Association or Montgomery Village Foundation.

## ***F. Public Facilities***

### **1. TRAFFIC**

Policy Area Review. The subject property is in the Montgomery Village/Airpark Policy Area, which had a deficit of 365 jobs under the FY 02 Annual Growth Policy transportation ceiling as of July 31, 2001. An office use of 36,000 square feet would generate 72 jobs under county standards. To mitigate this impact, the owner of the subject property has participated, on behalf of CSAAC, in the MD 124 Road Club. This is a private club organized by parties who seek to pursue development projects that would generate jobs within the Montgomery Village/Airpark Policy Area. The club members have jointly contributed funds to pay for the widening of Woodfield Road (MD 124) from two to four lanes between Airpark Road and Fieldcrest Road. This widening would not directly improve traffic conditions on East Village Avenue, but it would reduce congestion on MD 124, a major north-south roadway in the same Policy Area. Under the “Full Cost Developer Participation” provision of the FY 02 Annual Growth Policy, creating this additional roadway capacity would mitigate all of the traffic generated by the proposed CSAAC facility and the facilities planned by the other participants in the road club.

Local Area Transportation Review (LATR). The binding elements that CSAAC has added to the proposed DPA include a commitment to limit the number of employees arriving at and departing from the site during each of the weekday morning (7:00 to 9:00 a.m.) and evening (4:00 to 6:00 p.m.) peak periods to a maximum of 40. Based on this commitment, the project falls within the exception from LATR for development proposals generating less than 50 peak-hour trips. Because a traffic study is not required to satisfy LATR, congestion levels at nearby intersections were not analyzed. Moreover, no recent traffic data is available from other sources to assess intersection congestion along East Village Avenue.

The table below compares the number of peak-hour trips estimated for the CSAAC proposal to those for alternative land uses that could be considered for this site:

Land Use	Square Feet or Number	Peak-Hour Trips	
		Morning	Evening
<b>Alternative Land Uses:</b>			
General Office Use	36,000	53	72
Townhouses	60-80 Units	29-38	50-66
Single-Family Detached Units	25-50 Units	24-48	28-56
Elementary School	500 Students	145	N/A*
<b>CSAAC with 40 Employees:</b>			
Administrative Office/Training	40 Employees	40	40

\*Elementary schools end classes before the weekday evening peak period.

The traffic generated by the proposed use will be less than the alternative land uses except for townhouses during the morning peak period, the lower range of single-family detached units during both peak periods, and an elementary school during the evening peak period. Ex. 27, Technical Staff Report, p. 11.

Adequate Public Facilities Review. CSAAC's proposal would be required to proceed through the County's adequate public facilities review (APFR). This review would entail the reaffirmation of compliance with the policy area review and LATR standards. Technical Staff at MNCPPC has indicated that this DPA will satisfy APFR, but that the applicant would be required to enter into a Traffic Mitigation Agreement with the Planning Board memorializing the limit of 40 peak-hour employee trips, because without this limitation the project would be considered to generate more than 50 peak-hour trips. Staff also intends to recommend, as a condition, that use of the property be limited to an institutional use with a maximum of 36,000 square feet of office, training, and support space. This is consistent with the first binding element CSAAC has added to its proposed DPA.

## **2. THE ENVIRONMENT**

The evidence of record reveals few significant environmental issues on the subject property. Montgomery Village and the subject site are exempt from the County's Forest Conservation Law. A Natural Resource Inventory completed for the site shows only one significant tree, a large mockernut hickory tree. CSAAC has committed to preserving this tree as a landscaping feature on the property. If the DPA is approved, CSAAC will be required to submit to the MNCPPC an analysis of the tree's condition and a site plan indicating anticipated grading within the tree's critical root zone.

A stormwater management facility was constructed for this site several years ago, anticipating its use as a school property. This facility is located behind the park on the south side of East Village Avenue, as seen on the Vicinity Map reproduced in the Background Facts section of this report. Runoff from the site would be conveyed by an existing, closed storm drain system to the storm water management facility. The project would comply with the storm water sediment control regulations set forth in Chapter 19 of the County Code.

The amount of landscaped and green area and the proposed dedication of open space would minimize the amount of ground disturbance and soil erosion, as well as preserving the existing

natural features of the site to the extent possible. The location of the building and parking lot would generally follow the natural contours of the property, and would avoid construction on the steep slopes created by earlier grading activities.

#### IV. SUMMARY OF TESTIMONY

The summary of testimony is divided into five sections: the applicant's case in chief, community members in support, correspondence in support, the opposition's case in chief, and correspondence in opposition.

##### A. *Applicant's Case in Chief*

###### 1. Matthew Hurson, Member of the Board of Directors of CSAAC

Mr. Hurson described the services that CSAAC provides to its 350 clients<sup>5</sup> from its current administrative facility in the Broom Middle School. CSAAC services can be broken down into five primary categories: (1) residential – CSAAC manages<sup>6</sup> 51 homes for autistic adults in Montgomery County, approximately 28 of which are in or near Montgomery Village, in addition to a vacation home on the Delaware shore; (2) employment support for autistic individuals working for private employers; (3) education in dedicated classrooms in existing public and private schools; (4) an intensive early intervention program for infants and toddlers with autism; and (5) pre-school and after school respite services for families and individuals with autism. Most of these services are provided off-site, i.e., in homes and places of business, rather than in the CSAAC's administrative facility.

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<sup>5</sup> Mr. Hurson stated that CSAAC serves approximately 350 clients. However, the Applicant's written submission states that CSAAC provides services to approximately 200 children and adults with autism. See Ex. 5 at 4. It may be that the 350 figure includes parents or other family members of persons with autism. Absent confirmation of this in the record, we have used the higher figure to avoid underestimating possible impacts.

<sup>6</sup> CSAAC leases its homes from an affiliated non-profit organization that owns them, Residential Continuum, Inc.



Mr. Hurson testified that CSAAC was founded in 1979 in Rockville, but that over time, it has found that its opportunities for employment and affordable residential locations have migrated north into the environs of Gaithersburg and Montgomery Village.

Mr. Hurson stated that approximately five years ago CSAAC identified a need for more administrative space. CSAAC first sought to meet this need at its current location by renovating and expanding at the Broom Middle School. It secured a grant of \$2.2 million from the State Department of Health and Mental Hygiene for this purpose. The County Council informed CSAAC, however, that it would not be able to expand at the Broom Middle School due to the space requirements of other County agencies operating at that location. CSAAC then obtained approval from the Department of Health and Mental Hygiene to use the \$2.2 million grant at any appropriate and approved location, and began the search for an appropriate location. Mr. Hurson was invited to join the Board of Directors to lead this effort.

Mr. Hurson indicated that CSAAC spent a year or more searching for an appropriate headquarters location, and two years ago entered into a contract to acquire this site on East Village Avenue. He emphasized that the location was extremely important, as one of the goals was to have an administrative headquarters that is centrally located in relationship to the homes and work sites where CSAAC employees provide services.

Mr. Hurson testified that many CSAAC employees spend part of their workday or part of their work week at the administrative headquarters, but travel back and forth from that location to individual homes or work places where clients receive services, mainly support on the job or training in the home.

Mr. Hurson identified a map of Montgomery County, entered into the record as Exhibit 40, which shows the off-site locations where CSAAC provides services: homes managed by CSAAC, work places where CSAAC clients have jobs, and residences of families who receive services in their

homes.<sup>8</sup> The map also shows the locations of the Broom Middle School and of the site that is the subject of this application. Mr. Hurson opined that Ex. 40 showed a concentration of sites in the north central part of the County, in the Montgomery Village area. He was questioned quite closely about this opinion on cross-examination. Several Montgomery Village residents argued that CSAAC's residential and work place sites did not appear to be clustered in any particular area, and that many did not appear to be in the vicinity of Montgomery Village. As a result, they argued, the proposed site is inappropriate.

Mr. Hurson responded to this skepticism by pointing out that the trend in CSAAC's sites is moving from the southern portion of the County northward, in and around Montgomery Village. In response to further cross-examination, he testified that CSAAC examined a number of other sites, all of which turned out to be inappropriate due to either size or location. He stated that CSAAC also considered existing buildings, but did not find any that met its needs.

Mr. Hurson was questioned as to the role of cost in selecting a site for CSAAC's proposed headquarters and maintained that cost was not a primary factor. He conceded on cross-examination that some locations would not have been considered because of prohibitive cost, but he linked those locations to zoning or use districts that CSAAC considered inappropriate, such as major office or retail centers.

Mr. Hurson testified that CSAAC considers this administrative headquarters to be a community use, rather than an office use. Accordingly, CSAAC feels that its headquarters would not be appropriately located in an urban office environment such as Silver Spring or Bethesda, or in a high-density retail district.

Mr. Hurson further testified concerning the hours of operation and number of employees at the administrative headquarters. He stated that the hours in general are weekdays, 9:00 a.m. to 5:00

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<sup>8</sup> Exhibit 40 is not reproduced in this report because, if reduced to a size small enough for inclusion, it would no longer be legible or helpful.

p.m., but that certain activities may take place outside those days and hours. In particular, CSAAC's Board of Directors meets once a month, in the evening, at the headquarters.

Mr. Hurson stated that CSAAC has approximately 70 employees who use the administrative headquarters for some period of time. He acknowledged that CSAAC has committed to limit the number of administrative employees who arrive and depart during the morning and evening peak hour periods to 40. He testified that the limitation of 40 peak hour trips is consistent with current operations because many of the employees either are part-time and do not arrive or depart during peak hours, or have job requirements that require them to spend peak hours outside the administrative headquarters. Mr. Hurson noted that during the morning and evening peak hours, the busiest places for many CSAAC employees are in the homes of clients and in their places of employment.

Mr. Hurson was also questioned on cross-examination concerning CSAAC's financial ability to carry out its plans for this site. He testified that CSAAC has access to sufficient funding for this project due to its existing \$2 million grant, and due to a high probability of additional funding as needed from the State of Maryland or Montgomery County. He testified that the State and County place a high value on the social services that CSAAC provides, and that funding has been consistently available, particularly for capital projects. In addition, CSAAC has on record in this case a letter from Sandy Spring National Bank (Ex. 29YYY), which will probably be CSAAC's primary lender, expressing support for this project.

Mr. Hurson responded to several questions raised by a representative of one of the local community organizations, Mrs. Bonnie Wahiba. First, he confirmed that CSAAC would work with the community to make available for community use the multi-purpose room planned as part of the CSAAC headquarters. Second, he stated that this property would not be bound by the Montgomery Village covenants, but had agreed to be subject to the Montgomery Village architectural controls. Counsel for CSAAC interjected that none of the non-residential uses in Montgomery Village are bound by the

Montgomery Village covenants. Third, Mr. Hurson testified that while CSAAC has discussed in community meetings the possibility of future expansion on this site, the organization is aware that any future expansion would be subject to an additional DPA process and future community input. Finally, he testified that a large hickory tree located prominently on the site would be preserved.

2. Catherine Roland, Chief Financial Officer of CSAAC

Ms. Roland testified that she prepares CSAAC's budget and financial reports, works with State officials to secure adequate funding, and reports to the Board of Directors on the financial status of the organization. Her job duties also include working directly with individual clients of CSAAC to assist them with their tax returns. With regard to the breakdown between administrative and training functions for CSAAC staff, Ms. Roland had some difficulty making a precise description. She testified that approximately six full-time staff members do solely administrative work, while other employees, including herself, have both administrative and training functions. Nearly all the employees work directly with individuals and families to some degree, providing them with life-skills training.

Ms. Roland stated that the amount of time spent on administrative functions versus training may vary at different times of the year and is different for different employees. Some employees spend all their time working directly with clients and providing training, while others spend a substantial amount of time on administrative activities.

Ms. Roland testified that the limitation of 40 peak hour trips to and from the facility is consistent with CSAAC's current operation and is a commitment that CSAAC is prepared to make as a condition of approval of the requested DPA. On cross-examination, a member of the community questioned Ms. Roland concerning the work patterns of part-time employees. Ms. Roland testified that such employees may spend one day a week at the headquarters or a couple of hours during the middle of the day, with quite a bit of flexibility in that schedule. Most part-time employees, she stated, are out in the field most of the time, but do provide some services to clients at the administrative headquarters, as

well as doing some administrative work there. With regard to the hours of operation, she testified that any training taking place in the evening or on weekends typically would not take place at the administrative headquarters, but would be at the home of the family requesting the training.

3. Gary Unterberg, site planner

Mr. Unterberg is a registered landscape architect and site planner. He was designated as an expert in landscape planning, architecture and site design. Mr. Unterberg's firm, Rodgers and Associates in Gaithersburg, prepared the application and the original submittal for this development plan amendment. He is familiar with the Town Sector zoning district and Montgomery Village's planning and zoning history, having worked on prior amendments to the development plans for Montgomery Village. He also serves as a member and Vice Chair of the Montgomery Village Foundation's Commercial Architectural Review Board.

Mr. Unterberg described the zoning history of Montgomery Village, which includes the original development plan in 1968 and 15 amendments since that time. These amendments have changed some permitted uses and incorporated additional land into the Town Sector Zone. Mr. Unterberg identified residential, commercial, open space, transportation, utility and educational land uses on the current Land Use Plan, reproduced in the Background Facts section of this report.

Mr. Unterberg noted that as a non-residential project, CSAAC's proposal would not increase the population density of the site in question or Montgomery Village as a whole. Population density in the town sector zone is limited by statute to a maximum of 15 people per acre. Mr. Unterberg testified that based on the number of residents assumed for each type of housing, the current population density for Montgomery Village is 14.78 people per acre.

Mr. Unterberg stated that the proposed CSAAC site is located on Montgomery Village Avenue (MD 124), which is a main thoroughfare through Montgomery Village. The site measures 10.76 acres. Immediately east of the site is a Montessori School, which is a one-and-a-half story pre-

school located on Fulks Farm Road. A PEPCO transmission line right-of-way abuts the property to the north. Immediately to the north of the transmission line is a single-family residential neighborhood. Adjoining the site to the east is a single-family residential neighborhood of 23 houses flanking Harron Valley Way. Montgomery Village Avenue forms the southern boundary of the site. South of the site, immediately across Montgomery Village Avenue, are two town house communities, a single-family residential neighborhood along Silverfield Drive, and the DeSimon Recreation Area, which has a parking lot, a tot lot, and other facilities. These features can be seen on the Vicinity Map reproduced in the Background Facts section of this report.

Mr. Unterberg testified that the site at present is an open field with one large hickory tree. The site topography is raised at the north end along the transmission lines, and gently drains from the north to the south. There are two pedestrian underpasses on the site. One is located opposite the park, and the other at the intersection of East Village Avenue and Lewisberry Drive. Both provide pedestrian access underneath East Village Avenue, and are part of a network of paths throughout Montgomery Village that connect different types of land uses such as residential, recreational, and commercial.

Mr. Unterberg indicated that the site was a former tree farm for Kettler Brothers, which transferred ownership of the property a few years ago to the Frank M. Ewing Company, one of its financial backers. When most of the trees were removed from this site several years ago, Kettler Brothers built a berm along the property line at the western edge of the site and planted a number of trees, mostly evergreen, along the property line. Mr. Unterberg testified that although there are some gaps, this created a buffer of evergreen trees ranging in size from eight feet to 20 feet in height.

Mr. Unterberg described the Supplementary Plan approved by the Planning Board, which is reproduced in the Background Facts section of this report. The Supplementary Plan shows a one-story building sited near East Village Avenue with the existing path along the street frontage intact, as well as the large hickory tree and existing buffer trees. Mr. Unterberg stated that the applicant plans to

enhance the landscaping buffer around the site and around the parking area. The parking area is designed to be behind the building, with a sidewalk system connecting the entrance and parking area with the existing path system. The County has also requested that the developer build an additional five-foot sidewalk along East Village Avenue.

Mr. Unterberg testified that lighting at the site would be sufficient to light the parking lot, but would use cut-off structures to prevent the light from extending past the parking lot. The applicant also plans to arrange a schedule for turning off the lights in the evening.

Mr. Unterberg stated that the building would have a sign in front that would comply with the commercial architectural review standards, like the community signs for residential areas. These signs are generally low-mounted stone or brick with a pre-cast nameplate. Any illumination would be from ground fixtures lighting the sign from below.

The applicant originally proposed to dedicate three acres of land on the western side of the site for public use, to be owned by either Montgomery Village Foundation or the East Village Home Corporation. Mr. Unterberg noted that the applicant has had discussions with each of these entities, but it has not yet been determined which one should accept the dedication of land. CSAAC intends to allow the two community organizations to decide which group should take title to the land, and how it would be used.<sup>7</sup> The Planning Board requested that the applicant increase the land area for dedication to four acres. The applicant intends to comply with this request, provided that it can obtain a waiver of the applicable parking requirements that would allow it to reduce the number of parking spaces from 108 to 90, freeing up an additional acre of land.

Mr. Unterberg testified that looking at the site as a whole, CSAAC's proposed development would leave 78 percent of the site as open space. After removing three acres for dedication

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<sup>7</sup> The Applicant's counsel testified that based on preliminary discussions among the applicant, the community groups, and Technical Staff at MNCPPC, there appear to be many different views among area residents as to how the land CSAAC proposes to provide would be used.

to public use, 70 percent of the remaining site would be open space. (Mr. Unterberg did not provide a figure for the percentage of land left as open space if the public use dedication is increased to four acres.)

Mr. Unterberg opined that an elementary school would be a more intense use of land than the proposed CSAAC building. A school building would likely be bigger, between 40,000 and 60,000 square feet compared to the 36,000 square feet proposed here. The school would also have a variety of covered walkways and other areas that create additional impervious surfaces. In addition, it would typically have the same 90 parking spaces that CSAAC anticipates with the proposed waiver, plus a large bus drop-off area and parking area. Other typical uses such as ball fields and playgrounds would make the use of the site more intense.

Mr. Unterberg also opined that the proposed development would comply with applicable master plan and zoning requirements. With regard to the requirements of the town sector zone, he voiced several opinions, including the following:

Open space. This project would not cause the percentage of open space within Montgomery Village to fall below the statutory minimum of ten percent.

Forest conservation. Montgomery Village predates and is exempt from forest conservation requirements. In addition, there is no forest land on site, and the only significant tree is to be preserved.

Height limitations. The proposed building would be shorter than the three-story minimum permitted in the Town Sector Zone.

Compatibility. The proposed use is an appropriate use of land in relationship to surrounding uses, particularly in comparison with a school use. It is very compatible with the site, and would have no adverse impacts on the surrounding area. The building is planned to be adjacent to the Montessori School to the west, to be close to another non-profit with a learning center. The site already



has some buffer to the east, and the applicant intends to enhance that. The shortest distance from the parking lot to the north property line, along the PEPCO easement, is 80 feet, and there is sufficient room to improve that buffer as well.

On cross-examination, Mr. Unterberg agreed that the question of compatibility is a somewhat subjective determination, based on opinion.

4. Scott Knudson, architect

Mr. Knudson is an architect with Wiencek & Zavos Architects in Gaithersburg. He was designated as an expert in architecture.

Mr. Knudson's firm has developed a conceptual site plan for the CSAAC project which is now in the early stages of design. He testified that in designing this building, they were sensitive to the residential character of the neighborhood, the pre-school next door, and the pedestrian/bicycle path along the front of the site. Because the site slopes up at the north end near the PEPCO lines, on this site a typical institutional layout with green space abutting the road, then a parking lot, then a building would result in a big box sitting prominently on the landscape. To better integrate the building with the surrounding uses, Mr. Knudson and his team created a two-sided concept. As seen on Exhibit 48, reproduced in the Background Facts section of this report, the building is linear – long and narrow – with one side facing East Village Avenue and one side facing the PEPCO lines. The side facing the street is treated like a park, with extensive landscaping, recognizing that in some locations the building will be within 20 feet of the pedestrian/bicycle path. Mr. Knudson referred to the other side of the building as the “private” side, which would be treated as a series of residentially scaled elements.

Mr. Knudson testified that the building is designed as a series of wings linked by a corridor, with a lobby at the east end and a multi-purpose room at the west end. Mr. Knudson stated that breaking the building up into wings reduces the visual mass so it blends into the setting better. It

also allows ample natural light, which is helpful for people with autism, who tend to be particularly susceptible to the harsh contrasts of standard institutional lighting.

Mr. Knudson stated that the building as a whole would be curved, making it less monotonous and responding to the curve of the street. The wall of each wing that faces the street would be curved in a serpentine shape and finished with landscaped masonry. In addition, these outer walls would have no windows. That construction would give the workers inside some privacy, and would give people using the path a view of curved, landscaped masonry, rather than forcing them to stare into office windows. Landscaping would also be installed along each of these serpentine walls. The offices within each wing would have side windows, looking out on landscaped courtyards between each wing. On the side facing the houses in back of the site, the wings would look more residential in scale, with relatively low roofs. Conceptual plans are reproduced in the Background Facts section of this report.

The building would have two entrances, one into the lobby at the east end of the site, near the hickory tree, and another leading directly into the multi-purpose room from the parking lot. Mr. Knudson described the multi-purpose room as rising higher than the rest of the building, resembling a more traditional structure similar to the pre-school next door. Most of the building would have ceilings nine or ten feet high, while the multi-purpose room would have a 15- to 20-foot ceiling height. On cross-examination, Mr. Knudson acknowledged that the multi-purpose room would effectively be roughly the same height as a two-story house.

Mr. Knudson testified that based on his experience in designing schools, a school use would be much more intensive than CSAAC's proposed use, based on the size of the building, bus facilities, and traffic.

Mr. Knudson opined that the site design and architecture of the CSAAC building would be unusually compatible with the surrounding areas. With regard to potential adverse effects, Mr. Knudson opined that while any construction that replaces a green field with a building will have an

impact, CSAAC's proposed development would have the least possible impact relative to any other development he could envision.

5. Frank G. Bossong, IV.

Mr. Bossong is an engineer with Rodgers & Associates, Gaithersburg and was designated as an expert in civil engineering. His firm has been involved in site design for the CSAAC project, specifically engineering work for storm water management, storm drain and utility service, and grading. Mr. Bossong testified that a storm water management facility was constructed for this site several years ago, anticipating its use as a school property. This facility is located behind the park on the south side of East Village Avenue, as seen on Figure 14 of Exhibit 5 (*see* Background Facts section of this report). Runoff from the site would be conveyed by an existing, closed storm drain system to the storm water management facility. Mr. Bossong stated that this project would comply with the storm water sediment control regulations set forth in Chapter 19 of the County Code.

Mr. Bossong testified that all necessary utilities – water, electric, and gas – are available within the East Village corridor. He further testified that the proposed building has been designed to fit into the existing topography to minimize grading and keep the path and underpasses in place.

Mr. Bossong opined that from a civil engineering standpoint, the impacts of the proposed CSAAC headquarters would be significantly less than those of a traditional elementary school. The proposed development would result in less ground disturbance and therefore less potential sediment runoff. Mr. Bossong opined that the CSAAC project would have no adverse impacts on the surrounding area.

6. Edward Papazian. Mr. Papazian is a traffic transportation engineer with the firm of Kimley-Horn & Associates, Fairfax, Virginia. He was designated as an expert in transportation and traffic engineering.

Mr. Papazian has performed traffic analyses and traffic planning for CSAAC's proposed development. He opined that the project would have no adverse impact on the surrounding transportation system, based on its compliance with both policy area review standards and local area transportation review standards. To satisfy the policy area review standards, CSAAC intends to make use of the full cost developer participation provisions of the Annual Growth Policy. CSAAC will participate in a "road club" that has been organized by several developers to widen Route 124, Woodfield Road, from Air Park Road to Fieldcrest Road. The road club will fund the widening of this section of roadway from two to four lanes, which will create sufficient capacity in the policy area to mitigate the effects of the development projects proposed by club participants, including CSAAC. CSAAC's participation in the road club is documented in figures 8 through 13 of Exhibit 5.

Mr. Papazian testified that CSAAC was not required to perform a local area transportation review (LATR) because of its binding commitment to limit the number of peak period trips to and from the facility to no more than 40. This commitment brings the project within the exception from LATR for projects generating less than 50 peak hour trips.

Mr. Papazian acknowledged that in some cases, traffic generation or traffic patterns suggest a need to evaluate the traffic impact of a proposal in a manner different from the standards typically applied in Montgomery County. He opined that no extraordinary or unique circumstances exist in the present case that would call for further analysis. Mr. Papazian noted that the proposal would be required to proceed through the County's adequate public facilities review (APFR). This review would entail the reaffirmation of compliance with the policy area review and LATR standards. Mr. Papazian opined that CSAAC's proposal would satisfy the provisions of the APFR ordinance.

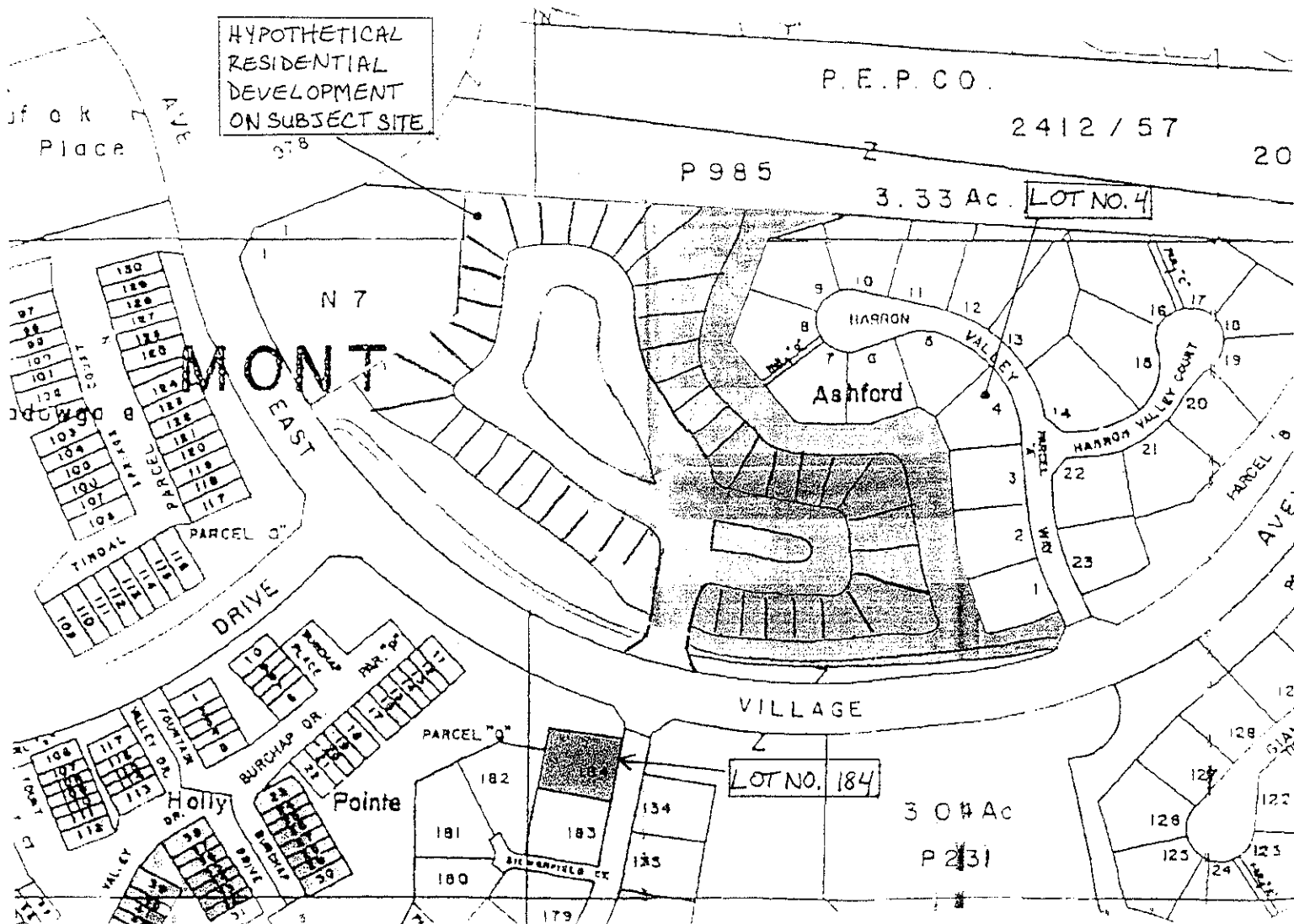
Mr. Papazian testified that access to the property would be very clean, with a single entrance appropriately located at an existing median break along East Village Avenue. He opined that the vehicular and pedestrian circulation systems into and on the site would be adequate, safe and

efficient, and that the proposed use would have no adverse impacts on the surrounding area. Mr. Papazian also opined that a public school would have a much greater impact on the roadway system than CSAAC's proposed use. Finally, Mr. Papazian testified that based on CSAAC's current and planned operations, the organization will have no difficulty complying with the limit of 40 peak-hour trips.

### **B. Community Members in Support**

#### **1. Steve Gemeny.**

Mr. Gemeny lives on the corner of Lewisberry Drive and East Village Avenue, directly across East Village Avenue from the proposed CSAAC site. On the map reproduced below and identified as Ex. 41, Mr. Gemeny's house is lot number 184.



Mr. Gemeny testified that he supports the CSAAC proposal because it represents no additional load for any of the Village facilities, nor would it increase population in the Village, and it would preserve green space to a significant extent. Mr. Gemeny stated that if residents were to work with CSAAC they would likely find an increase in available recreational facilities. He further stated that CSAAC would not create excess traffic levels during peak hours.

Mr. Gemeny noted that representatives of residents opposed to CSAAC's proposal stated that residential development would be preferable to office use at the proposed location. He then presented Exhibit 41, shown on the previous page, depicting a hypothetical residential development on the land that CSAAC seeks to occupy. He hypothesized that development of this property with 45 zero-lot-line homes would yield 200 residents. Mr. Gemeny described the likely impacts of such a residential development as additional crowding in public facilities, such as schools and roadways.

Mr. Gemeny characterized the organized opposition to the CSAAC proposal as a group of residents who have a clear track record of opposing all development, whether commercial or residential, within Montgomery Village.

Finally, Mr. Gemeny stated his opinion that CSAAC's development plan would be in the best interest of East Village.

## 2. Christine Mitchell Sullivan

Ms. Sullivan lives on Harron Valley Way, the street immediately adjacent to CSAAC's proposed site, and her backyard adjoins the property CSAAC proposes to develop. On Exhibit 41 (shown on the previous page), her home is lot number four. Ms. Sullivan testified that she previously lived directly behind an elementary school, so she has some familiarity with the impacts of a school site on a neighborhood. She stated that she feels CSAAC's plan would be compatible with the neighborhood, perhaps even more so than a school, given the size of the site and other limitations.

Ms. Sullivan described the CSAAC proposal as fully compatible with the general development of Montgomery Village, which includes residential, commercial, and other types of uses located adjacent to one another.

3. Jim Reyna

Mr. Reyna is a resident of Silver Spring, Maryland. He testified on behalf of his son, who is an autistic adult, a client of CSAAC, and a resident of Montgomery Village. Mr. Reyna testified as to the benefits his son has derived from the assistance and training he has received from CSAAC, which have been integral to his ability to work and live a normal, independent life. Mr. Reyna stated that CSAAC is not a business or a regular office, but rather a community service that belongs in a community setting. He described CSAAC as performing some of the same functions as groups or facilities that certain members of the opposition have stated they would support in this location: a school, a church or an assisted living center. He also emphasized the value of having CSAAC's headquarters located in the Montgomery Village community, where 50 to 60 of the organization's adult autistic clients reside.

3. Susan Hartung

Ms. Hartung testified that she lives in Gaithersburg approximately five minutes from the proposed CSAAC site. She is the mother of four children, two of whom are severely autistic, but she and her family do not receive any services from CSAAC. Ms. Hartung described briefly the stresses of raising autistic children and the vital role that an organization like CSAAC can play. She noted that Montgomery Village has precedent for locating offices in a residential community, namely the offices of the Montgomery Village Foundation, which are located in a residential neighborhood. Ms. Hartung closed by emphasizing that giving CSAAC all possible support is in the public interest.

4. Mary Shewan

Ms. Shewan lives in Montgomery Village, just across East Village Avenue from CSAAC's proposed site. She spoke in support of CSAAC's proposal based on community need and the compatibility of the use. Ms. Shewan has a son with autism, as well as two other children. She stated that she has a neighbor within 200 yards of her home who also has autistic children. She stated that parents of autistic children need all the resources possible to help their children reach their potential. She further stated that she believes CSAAC's headquarters belongs in a residential area, just as individuals with disabilities belong in our neighborhoods, living and working in the community alongside their neighbors. She described CSAAC's proposal as a wonderful example of the integration of the special needs population into the community.

5. Angela Adkins

Ms. Adkins lives in Montgomery Village within walking distance of the proposed CSAAC site, and is an employee of CSAAC. She grew up in Montgomery Village and bought her own home in the Village four years ago. She has worked at CSAAC for 10 years as a residential coordinator. Her job involves supervising several group homes located in Montgomery Village. She stated her support for CSAAC's proposal, both as a resident and as a CSAAC employee.

6. Marilyn Sideberg

Ms. Sideberg is a resident of Rockville and grandmother of a seven-year old autistic child. She testified as to the enormous benefits that her grandchild and her family have derived from CSAAC's services. She stated that CSAAC needs this land and we in the community need their resources.



### **C. Correspondence in Support**

#### **1. Steve Gemeny**

Mr. Gemeny, who also testified at the hearing, made several additional points in a letter dated October 23, 2001 (Ex. 39(f)). First, he described the subject site in its current state as suffering from a near-total lack of maintenance. He stated that a lack of regular mowing has led to a healthy population of vermin, including rats, mice, snakes, foxes, and a tick infestation. He describes the site as an eye sore and a risk to the community's health.

Second, Mr. Gemeny considered possible alternative uses for the property: a school, residential development, or commercial use, each of which would have significant adverse effects on the surrounding area. He concluded that CSAAC's proposed institutional use, in contrast, would not overload area streets, schools, or recreational facilities.

Third, Mr. Gemeny noted that he was asked to sign a petition opposing both CSAAC's plan and a proposed residential development scarcely a mile away. This suggested to him a blanket opposition to any form of development, which he described as very unrealistic. Finally, he concluded that CSAAC's proposal is in the best interest of the residents of Montgomery Village.

#### **2. Patricia Aubin**

Ms. Aubin is the president and owner of the Village Montessori School located adjacent to the subject site. She has written both to the House Appropriations Committee of the Maryland House of Delegates (Ex. 29D) and to the MNCPPC (Ex. 29RRR), to support CSAAC's proposed headquarters at this location. She noted her support for CSAAC's mission, and stated that locating its headquarters at the subject site would be appropriate and would have no negative impacts on the surrounding area.

#### **3. Robert Hincke**

Mr. Hincke lives in a development located directly across the street from the subject site. He stated that he believes the site will not remain vacant forever, and he would prefer an institutional use

such as CSAAC, with few impacts, rather than additional residential development that would add to congestion (Ex. 29I).

4. Additional letters

The record also contains over one hundred letters from individuals and organizations<sup>8</sup> familiar with CSAAC's work who urge approval of the DPA. Some are members of CSAAC's board, who eloquently describe the organization's positive contributions. Many are family members of autistic adults who live in Montgomery Village, and some are residents of Montgomery Village themselves. Each of these letters describes the value of CSAAC's services. Most also discuss why the subject site is appropriate, e.g. the proximity of the site to many of CSAAC's clients, its proximity to public transportation, and the fact that the proposed headquarters facility would have few impacts on public facilities, with little contribution to rush hour traffic and no contribution to the school population.

***D. Opposition's Case in Chief***

1. Bonnie Wahiba

Ms. Wahiba, a resident of Montgomery Village, made an opening statement on behalf of residents of East Village and East Gate in Montgomery Village. Ms. Wahiba first stated emphatically that those in opposition to this application are not opposed to CSAAC or its mission, nor are they opposed to having autistic people in their neighborhood. However, they do not believe that an administrative office building belongs in their community. She represented that many of the neighbors would be open to having group homes, for autistic individuals or others, on the property where CSAAC seeks to locate its administrative headquarters.

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<sup>8</sup> The Montgomery County branch of the NAACP, the Multicultural Community Partnership of the Montgomery County branch of the NAACP, and the Montgomery County Chapter of the Autism Society of America.

Ms. Wahiba stressed her concerns about compatible uses. She noted that the area surrounding the subject site is completely residential except for a small Montessori school. She stated that nearly all of the students at this school live in East Village, so it serves the community directly.

Ms. Wahiba cited a large number of residents who have either signed petitions or completed surveys indicating an opposition to the use of this property for any non-residential purpose. She specifically urged the hearing examiners to investigate questions posed by Planning Board member John Robinson during the Planning Board's public hearing on this application. These questions are summarized below.<sup>9</sup> Responses provided by the applicant's witnesses are noted parenthetically.

(1) CSAAC has stated that its primary motive in choosing this site is a central location with regard to the homes that the organization operates for autistic adults. The locations of those homes, however, have never been identified. (Approximate locations are shown on Ex. 40. Confidentiality concerns prevent the disclosure of exact addresses.)

(2) Does CSAAC own or lease the homes that it operates? (CSAAC leases the homes from an affiliated non-profit organization.)

(3) How much administrative work versus training would be performed at the proposed facility? (Difficult to say, as it varies among employees and at different times of the year.)

(4) What would be the hours of operation at this site and would training be conducted during the evenings or on the weekend at this location? (Standard hours would be 9:00 a.m. – 5:00 p.m., Monday through Friday. As a general matter, training would not take place on-site during evening or weekend hours.)

(5) How much support has CSAAC been given by the State of Maryland for the purchase of this site and the construction of the administrative building? Is CSAAC in a financial

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<sup>9</sup> The text of Ms. Wahiba's statement is available in writing as Ex. 54.

position to finance this development? (CSAAC has a grant of \$2.2 million from a State agency for this project, and expects additional assistance from the State and County as needed.)

(6) If CSAAC should decide one day to leave this property, what future uses would be permitted? (One of the proposed binding elements limits the use to CSAAC purposes.)

(7) What kind of expansion plans does CSAAC have and how do they involve this site? (Any expansion would require a new DPA application.)

(8) CSAAC has stated that the community would be able to use the multi-purpose room at this site, but how would they take advantage of that offer? What types of use would be permitted and what would the cost be? Would it be comparable to the use of a school building, and would it be available in the evenings? (The multi-purpose room would be made available. Details would be worked out later.)

(9) Would CSAAC be bound by the covenants of East Village Homeowners Corporation and/or Montgomery Village Foundation? (No, but it would bind itself to the Montgomery Village Foundation architectural controls.)

(10) Will CSAAC's plan be changed as suggested during the Planning Board's final review to move the parking lot closer to the PEPCO power lines? This would prevent lighting from the parking lot from shining directly into the homes on Harron Valley Way. (CSAAC plans to include such a shift in its application for a waiver from parking standards.)

(11) What will happen to the beautiful tree on the property? (It will be preserved.)

2. Ursell Peterson

Ms. Peterson simply stated her agreement with the statements of other Montgomery Village residents who are opposed to the CSAAC application.

3. Mary Jo Shapiro

Ms. Shapiro has lived in Montgomery Village for 12 years and spoke to echo the sentiments of Bonnie Wahiba. She spoke in support of CSAAC's work but stated that its administrative headquarters does not belong in a residential neighborhood. She added that she herself works for a non-profit organization doing work on behalf of children, and that her office is located in a commercial area rather than a residential neighborhood. She explained that she is Executive Director of SS Children's Villages USA, which is an international children's charity. On questioning by applicant's counsel, Ms. Shapiro stated that her organization does not provide services to the community in which it is located.

4. Saul Schepartz

Mr. Schepartz, a resident of Montgomery Village, made a closing statement on behalf of area residents who oppose this DPA. We include it here because the statement offered factual information and opinion in the nature of evidentiary testimony.

Mr. Shepardtzt reiterated the community's support for CSAAC's work and sought to differentiate that from opposition to an office use at the proposed location. He rejected Mr. Hurson's characterization of the proposed site as centrally located in relation to CSAAC's residential and work place sites, finding, in contrast, that the locations identified on Exhibit 40 are spread out across the County. He also questioned Mr. Hurson's statement that cost was not a primary factor in CSAAC's site selection. Finally, he stressed that the issues of compatibility and community need are very subjective. He and the residents he represents believe that the neighborhood does not have a need for the development CSAAC proposes, and that CSAAC's use would not be compatible with the residential area surrounding the site.

Mr. Schepartz's objection to the application was based almost entirely on the character of the use, which he stated does not belong in a residential area. He had few concerns about traffic or the

design of the building. Mr. Schepartz suggested that if the same building were proposed for a use that would provide services directly to the surrounding community, he would be unlikely to oppose it.

Mr. Schepartz also represented the opposition on the second hearing day, when the applicant presented its proposed binding elements. He indicated that he had reviewed the binding elements prior to the hearing and suggested some changes, which were incorporated. He also stated that his concerns about the nature of the use are eased by the binding element that limits the use to CSAAC's purposes, preventing the site from being converted into a more general commercial use without a new DPA. However, those concerns are not eliminated, and Mr. Schepartz and those he represents remain opposed to this DPA on grounds of incompatibility.

### ***E. Correspondence and Petitions in Opposition***

#### **1. Saul Shepartz.**

Mr. Shepartz, who testified at the hearing, also provided a letter dated October 16, 2001, in which he discussed the results of a survey taken of East Village residents. The survey tally indicates that nearly 1,400 surveys were sent and 38% were completed. Of the approximately 530 persons returning the survey, 56% were aware of CSAAC's proposal before receiving the survey, and 76% opposed the proposal.

#### **2. James Kiley**

Mr. Kily lives adjacent to the subject site. He argues that an office/commercial building, as he characterized CSAAC's proposed use, would be inappropriate in a residential setting (*see* Ex. 30A). He stated that many area residents have voiced concerns about impacts on roads, entry into the facility, lighting, aesthetics, return benefits to the community, and potential for negative impact on property values.

### 3. Robert and Sheila Spector

Mr. and Mrs. Spector, Montgomery Village residents, wrote in opposition to an office building at the subject site (Ex. 30R). They noted that they do not oppose all development of the site - they would not oppose a school, nursing home, assisted living facility, day care center or similar use that would be of value to area residents. They oppose the proposed use because it could be located anywhere, and does not need to be in a residential area to carry out its function.

### 4. John Pagano

Mr. Pagano resides in East Village not far from the subject site. He wrote in opposition to an office building in a residential neighborhood (Ex. 30C). He specifically rejected the contention that CSAAC's headquarters would not really be an office use, arguing that an office building housing a worthy non-profit organization is still an office building.

### 5. Charles and Mary Rushing

The Rushings are residents of Montgomery Village and the grandparents of an autistic child. They oppose the use of the subject site for commercial purposes, even by a non-profit entity.

### 6. Additional letters

The record contains approximately 25 additional letters from Montgomery Village residents, as well as the Montgomery Village Citizens' Coalition, in opposition to this DPA. These letters voice strong opposition to any form of office or commercial development in a residential area. Other points made in many of the letters include the following:

- The East Village has already suffered from the permitting of commercial developments such as the Goshen Oaks shopping center, the Gaithersburg Recycling Center, and development on Snouffer School Road.
- While a public school in a residential area would tend to increase property values, commercial development does not have that effect.

- Many homeowners purchased their property in reliance on representations that the subject site would be developed as a public school.
- A commercial use would tax public facilities without paying Montgomery Village assessments.
- A commercial use would unalterably change the character and spirit of the surrounding area.

#### 7. Petitions

The record includes 227 petitions signed by Montgomery Village residents expressing their opposition to commercial development in East Village (Ex. 31). The petition text states that its purpose is to oppose an office building proposed for the subject site. It does not identify the party proposing the development in question, or the specific nature of the use.

### **V. CONCLUSIONS**

The Town Sector Zone is a performance-based floating zone that permits considerable flexibility for the developer because many of the specific restrictions that regulate, in other zoning categories, the height, bulk and arrangement of buildings and the location of various land uses have been either relaxed or eliminated. The last DPA for Montgomery Village was approved in 1990. Given the lapse of time since the last DPA review, it is useful to review the Town Sector process before the standards applicable to the DPA are evaluated.

#### **A. *Town Sector Process***

The flexibility of the Town Sector Zone is intended to encourage a harmonious and creative mix of land uses and building styles in a manner that will provide for a model community. *See* Code § 59-C-7.21. The Town Sector Zone is designed to provide significant open space and other community amenities, and to allow for environmentally sensitive development.



The Town Sector Zone is the most flexible of all the planned development zones in Montgomery County, and the degree of specificity normally required of a development plan does not apply. Instead, a more generalized land use plan governs the general shape and character of development. The land use plan does not require the same information about staging or development programs as the development plan required for other planned development zones.

Because neither the normal safeguards of a traditional zoning district nor the detailed requirements of a standard development plan apply to the Town Sector Zone, a three-tiered review system has been imposed to insure that there is a compatible arrangement of land uses, density and buildings. These steps are described below.

(1) In the course of making its recommendation on a DPA, the Planning Board must review and approve a *Supplementary Plan* that shows the general locations of access points, various types of land uses, and stormwater management facilities, and identifies the proposed development sequencing and preliminary forest conservation plan. *See* Code §59-D-1.3(g). The Supplementary Plan may be changed in the course of subdivision review and approval or site plan review and approval, but any revisions must be (a) consistent with the land use plan approved by the District Council (see below), and (b) in accord with the purposes of the zone. *Id.*

(2) The District Council must approve a *Land Use Plan* that establishes general requirements for land use and density within each planning area and for the total area under the Town Sector Zone. *See* Code § 59-D-1.3(f).

(3) The Planning Board must review and approve a more detailed *Site Plan*, including approval of any revisions to the Supplementary Plan. Code §§ 59-D-1.8, 59-D-1.3(g)(7). This may be followed by subdivision review and approval, as necessary.

This multi-tiered review process involves some overlap. For example, both the District Council and the Planning Board will evaluate compatibility issues and the adequacy, safety and efficiency of the pedestrian and vehicular internal circulation system. In addition, the approved Supplementary Plan will be part of the record considered by the District Council in reviewing the Land Use Plan.

When the applicant proposes a change to land use or density or both within a Town Sector Zone, the Land Use Plan must be amended under the procedures established for a DPA. *See* Code §§ 59-D-1.3(f) and (g). The DPA is evaluated under the same standards applicable to the Town Sector Zone generally. *See* Code § 59-C-7.2.

### ***B. Required Findings for Approval of a DPA***

Before approving a DPA, the District Council must make five specific findings. Code § 59-D-1.61. These findings relate to consistency with the master plan and the requirements of the zone, compatibility with surrounding development, circulation and access, preservation of natural features, and perpetual maintenance of common areas. *See id.* The required findings are set forth below in the order in which they appear in the Zoning Code, together with the grounds for our conclusion that the evidence in this case is sufficient to make the required findings.

- (a) *That the zone applied for is in substantial compliance with the use and density indicated by the master plan or sector plan, and that it does not conflict with the general plan, the county capital improvements program or other applicable county plans and policies.*

The Master Plan recommends medium-density residential use for the planning area in which the subject property is located. Master Plan at 43, 45, Figures 14 and 16. It designates the subject

property as a potential elementary school site.<sup>10</sup> Anticipating the possibility that a site so designated might not, in fact, be needed for public school purposes, the Master Plan states specifically that “it is important that at least a portion of each undeveloped school site in Montgomery Village be transferred to the Montgomery Village Association for field sport recreation, if the site is not needed for school construction.” See Master Plan at 95.

Technical Staff at MNCPPC found that the proposed use would not “adversely affect the intent” of the Master Plan because the scale and density of the proposed facility is similar to that of the Master Plan designation for the site, a public elementary school. The proposed building footprint is smaller than a typical elementary school, and the plans would preserve 70% of the property retained for CSAAC’s use as setbacks and green space. The maximum density would not exceed the low Floor Area Ratio (FAR) of .10. In addition, CSAAC intends to dedicate three to four acres of land – roughly one third of the parcel – to a community organization for open space or recreational use.

Technical Staff also noted that the public school recommended in the Master Plan would be an institutional use, and that CSAAC is a “charitable or philanthropic institution” as defined in the Zoning Code:

***“A private, nonprofit organization whose primary function is to provide either health, social, recreational, religious, or benevolent services, or research or educational activities in areas of benefit to the public such as health, medicine, or conservation of natural resources.” [Code § 59-A-2.1, emphasis added].***

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<sup>10</sup> The Land Use Plan published with the Master Plan included a potential elementary school as a floating site in the immediate vicinity of the subject property. Potential school sites often are shown as floating sites at the time a Master Plan is prepared, with the exact location to be determined at subdivision or development plan approval. In this case, the potential elementary school site was specifically tied to the subject property when the original Land Use Plan for Montgomery Village was approved (see Ex. 2). The specific designation first appeared on the Montgomery Village Land Use Plan, but it was in effect carrying out a Master Plan designation and should be treated as such. See Gaithersburg Vicinity Master Plan Land Use Plan, January 1985; Montgomery Village Land Use Plan (Ex. 2).

As a nonprofit provider of social services and educational activities, CSAAC fits squarely within this definition. Accordingly, its proposed administrative headquarters can be considered an institutional use, consistent with the Master Plan designation for the property.

Evidence presented by the applicant, principally the testimony of its site planner and information in its written application materials (*see* Ex. 5), supports the Technical Staff's determinations concerning compliance with the Master Plan. No evidence directly related to the Master Plan was presented in opposition to the application. We conclude that the evidence of record supports a finding that the proposed DPA would be in substantial compliance with the use and density indicated by the Master Plan.

The applicant has stated (Ex. 5 at 7) that the proposed DPA is not dependent on any public improvements identified in the County's Capital Improvement Program. In the absence of any contradictory evidence, we take this statement to be accurate. We conclude that this DPA does not conflict with the master plan or general plan. In the absence of any contradictory evidence, we further conclude that the proposed DPA does not conflict with any other county plans or policies (the broader question of whether approval of the DPA would be in the public interest is addressed in a later section).

- (b) *That the proposed development would comply with the purposes, standards, and regulations of the zone as set forth in article 59-C, would provide for the maximum safety, convenience, and amenity of the residents of the development and would be compatible with adjacent development.*

The purpose clause for the Town Sector Zone is found in Section 59-C-7.21 of the Zoning Ordinance and states in part:

*It is the purpose of this zone to provide a classification which will permit development of or additions to planned new towns or additions to existing urban developments. Such towns shall contain, insofar as possible, all of the residential, commercial, community and industrial facilities needed to make possible a town that is reasonably self-sufficient for all purposes, except major employment and central business district shopping. Adequate provision shall be made for the maintenance of open space...*

\* \* \*

A new town . . . [should contain] as nearly as possible all of the commercial, *employment*, cultural and *recreational* facilities desirable and necessary for the satisfaction of the needs of its residents . . . [have a density that makes] the most efficient use of public utilities, *but low enough to permit the incorporation of large amounts of open land within the town for recreational and scenic purpose* . . . [and have] transportation facilities adequate to serve the anticipated total population[, and] . . . public sewer and water shall be available at the site or planned for construction.

\* \* \*

The fact that an application complies with all specific requirements and purposes set forth herein shall not be deemed to create a presumption that the application is, in fact, compatible with surrounding land uses and, in itself, shall not be sufficient to require the granting of any application. [Emphasis supplied].

The proposed DPA would permit the development of an administrative headquarters to facilitate the provision of community services to the Montgomery Village community and the broader community of Montgomery County. Many of those who benefit from CSAAC's services either live or work in Montgomery Village. The proposed development would continue the pattern of self-sufficiency for the Town Sector Zone by making those services more accessible and by adding new employment opportunities. By preserving the pedestrian/bicycle path, the DPA would maintain an existing recreational facility that the community appears to value. In addition, dedicating approximately one-third of the site for open space or recreational use would further the objective of incorporating large amounts of open land for recreational and scenic purposes. Based on all of these considerations, we conclude that the proposed DPA would comply with the purpose of the Town Sector Zone.

The Town Sector Zone also sets parameters for maximum commercial and industrial space in the zone, minimum open space, population density, building height, and utilities. *See Code*

§§ 59-C-7.24 through 7.27. The proposed DPA would comply with each of these parameters, as described below.

1. Commercial space and industrial space must be limited to ten percent and six percent of the total area of the zone, respectively. The proposed DPA would not cause the percentage of land dedicated to commercial or industrial uses in Montgomery Village to exceed these limitations, even if the CSAAC headquarters were considered a commercial use.

2. Open space must occupy not less than ten percent of the total area of the zone. The proposed DPA would not cause the percentage of open space in Montgomery Village to fall below this level.

3. Population density may not exceed 15 persons per acre. The proposed DPA would have no effect on population density.

4. Heights of all buildings in the zone “shall be consistent with the limitations set in other zoning classifications for areas of similar density or similar use,” according to Code § 59-C-7.26. The applicant’s site planner, Mr. Unterberg, testified that town sector zoning permits buildings of up to three stories in height. We do not find it necessary to resolve this conflict, because the maximum height proposed for CSAAC’s headquarters building – up to 20 feet for the multi-purpose room – is lower than three stories and is also lower than the height limitations applicable in the surrounding single-family and townhouse residential areas.

5. Water and sewer service must be available to all buildings in the zone. Water, sewer, electric, and gas utilities are available at the subject site, and the property’s location in an area of medium density development will assure efficient use of public utilities.

Thus, we conclude that the proposed DPA would comply with the purposes, standards, and regulations of the Town Sector Zone. We next address compatibility, which has been the most strenuously contested issue in this case.<sup>11</sup>

CSAAC considers its proposed administrative headquarters to be a resource center that serves the community and should properly be located in a community setting. The CSAAC board member most directly responsible for identifying an appropriate location for the facility testified specifically that the Board felt it would be inappropriate to place this facility in an area such as an urban office environment or a major retail district. CSAAC considers the subject site particularly appropriate because a large proportion of the homes and work places where it provides services are located in Montgomery Village. Like CSAAC's representatives, other individuals who spoke in support of CSAAC at the hearing emphasized that they do not consider the proposed headquarters to be a standard commercial facility. Several mentioned the value to CSAAC's clients who live or work in Montgomery Village of having the headquarters facility located nearby. Supporters also remarked that CSAAC's presence in a community setting would be beneficial in terms of community diversity and fostering the acceptance of persons with disabilities.

The site planning and architectural experts testifying on CSAAC's behalf opined that the proposed facility would be compatible with the surrounding community. They also testified that in comparison with an elementary school facility – the use originally intended for the site – the proposed headquarters building would be a less intensive use of land and resources, and would have lesser impacts on adjacent development. The applicant's architectural expert went so far as to describe the proposed development as “unusually compatible” with adjacent development.

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<sup>11</sup> We do not address the middle clause of Code § 59-D-1.61(b) concerning “the safety, convenience and amenity of the residents of the development” because the proposed development is non-residential.

The witnesses discussed at length how the site plan and building layout were designed to make the facility as compatible as possible with adjacent development. Steps taken to this end include:

- a. Siting the building at the east end of the site, adjacent to the existing pre-school which, like CSAAC, is a non-profit institutional use.
- b. Siting the building at the lower, southern end of the site to avoid having it sit prominently on the higher ground at the north end of the site.
- c. Avoiding a typical institutional or commercial design for the building so it will be better integrated with adjacent development. Creative elements of the building include a long, narrow shape that mirrors the curve of the road; breaking the building up into individual wings, which reduces the visual mass; designing the walls facing the path as a series of curved, landscaped masonry sections rather than banks of office windows; and extensive landscaping and berming on the East Village Avenue side of the building.
- d. Adding to the DPA a binding element requiring that site lighting preclude off-site glare or spillage.
- e. Adding to the DPA a binding element requiring enhancement of landscaping and buffering along the site perimeter and around the parking area facing residential uses.

The engineering and traffic experts testifying on CSAAC's behalf opined that (i) CSAAC's headquarters would be a less intensive use of land and resources than an elementary school, and (ii) the proposed development would have no adverse effects on surrounding development, including utility services and the roadway system.

CSAAC correctly cites its intention to dedicate three to four acres of land to a community organization for open space or recreational use as an important factor in assessing compatibility. The dedication of approximately one-third of the land area to community use enhances the compatibility of



the proposed development by assuring that the surrounding community would retain a significant portion of the benefit it currently derives from the site as an open field. In fact, one might argue that the community could derive *greater* value from three to four acres owned in fee by a community organization – and therefore available for active recreational use or for improvement as enhanced open space – than from ten acres under private ownership, with no effort at enhancement.<sup>12</sup>

The community members who oppose CSAAC's application do so essentially for one reason: *compatibility of the use*. They do not appear to object to the site design or building layout, nor are they overly concerned with traffic issues. Some opponents – and even some supporters – are eager to see additional landscaping and buffering installed along the property line and around the parking area, as CSAAC has committed to do. Several opponents also testified that they do not believe the site is centrally located with regard to CSAAC's residences and work places, despite CSAAC's statements to the contrary. The overriding issue, however, is that the opposition considers the proposed administrative headquarters to be a commercial office use that would be inappropriate in a residential neighborhood. It seems that the opposition participating in this case opposes *any* office or commercial use at this site, regardless of the nature of the use, the site design, or the direct impact on public facilities. This opposition is based in part on a concern that construction of an office building at this location could open the door to other, more intrusive commercial uses in the future, in the event that CSAAC decides to move elsewhere.

One might expect that such strong opposition to commercial uses would extend to the existing pre-school located adjacent to CSAAC's proposed site. Testimony indicated, however, that

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<sup>12</sup> One confronting property owner, Mr. Gemeny, stated in correspondence in support of CSAAC's application that the subject site is not mowed on a regular basis, and has become home to mice, rats, snakes, foxes and a tick infestation. He considers it an eye sore and a nuisance in its current state.

opponents of this project do not object to the existing pre-school for two reasons: (i) it provides direct services at its location on East Village Avenue, and (ii) nearly all of its students live in Montgomery Village. CSAAC, in contrast, would provide most of its services off-site, and many of its clients live and work outside of Montgomery Village.

As a threshold matter, we find that the preponderance of the evidence indicates the subject site is reasonably centrally located for CSAAC's purposes. Even if it were not, however, this would not be determinative of compatibility.

All zoning is based on the notion that separation of land use must achieve compatibility as well as advancing legitimate governmental objectives. *Village of Euclid v. Amber Realty Co.*, 272 U.S. 365 (1926). The compatibility requirement is especially important within the Town Sector Zone because of the absence of traditional zoning safeguards that limit the types of uses and structures permitted in a zone. Factors that may be considered relevant to compatibility include compliance with the express purposes of the zone, any detrimental effects on the use of property in the surrounding area, and the kind, location, size and form of structures proposed for development. See *Aubinoe v. Lewis*, 250 Md. 645, 244 A.2d 879 (1968); *Kramer v. Board of Cty. Comm'rs for Prince George's Cty.*, 248 Md. 27, 234 A.2d 589 (1967); *Chatham Corp. v. Beltram*, 243 Md. 138, 220 A. 2d 589 (1966). In the case before us, we have concluded that the proposed development complies with the purposes of the Town Sector Zone. Moreover, we note that a charitable or philanthropic institution is permitted by right or special exception in many zones of the County, including most single-family residential zones, and that the Town Sector Zone permits all uses authorized in any zone, by right or special exception.

Based on extensive evidence describing the building planned for this site, we find ample support for the conclusion that the facility would be compatible with adjacent development. The site design and building layout have been carefully structured to blend in with the adjacent school and residential neighborhoods. The site plan preserves the existing pedestrian/bicycle path, and would

enhance the landscaping of the property. In addition, approximately one third of the property would be provided to a community organization for recreational or open space use. From aesthetic and recreational standpoints, then, the proposed development is likely to benefit adjacent development and the surrounding area. Moreover, none of the evidence presented suggests that the proposed development would have any objectively identifiable adverse effect on the surrounding area.

To the extent that opposition to this application is based on fears that CSAAC will someday abandon this site to an occupant that is unambiguously commercial and has greater impacts on the neighborhood, we believe that this concern is largely resolved by the binding element that explicitly permits only “charitable, philanthropic and educational uses related to” CSAAC’s mission. The remaining basis for the opposition articulated in this case amounts to a philosophical objection to any use that could be considered commercial – a thin reed on which to base opposition to a development proposal with so many positive attributes and so few negative ones. We are not persuaded that CSAAC’s proposal is rendered incompatible merely because it has some attributes of a commercial office use. We conclude that on balance, the evidence supports a finding that the proposed development would be compatible with adjacent development.

- (c) *That the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient.*

Undisputed evidence indicates that the proposed internal vehicular and pedestrian circulation systems and points of external access would be safe, adequate, and efficient. In addition, the Planning Board will review this issue again at the site plan stage.

- (d) *That by its design, by minimizing grading and by other means, the proposed development would tend to prevent erosion of the soil and to preserve natural vegetation and other natural features of the site. Any applicable requirements for forest conservation under Chapter 22A and for water resource protection under Chapter 19 also must be satisfied. The district council may require*

*more detailed findings on these matters by the planning board at the time of site plan approval as provided in division 59-D-3.*

The preponderance of the evidence indicates that the proposed development would tend to prevent erosion of the soil and to preserve natural vegetation and other natural features of the site. It would achieve these results in part through the site plan and building layout, which are designed specifically to work with the site topography and other natural features and to minimize grading. The site plan also provides for dedication of roughly one-third of the property for open space or recreational use, which reduces the area of ground disturbance. In addition, the site plan would preserve all existing trees on the property, including a large mockernut hickory tree that is considered a significant specimen. Like Montgomery Village as a whole, the property is exempt from forest conservation requirements. Further, undisputed testimony indicates that the proposed development would satisfy the requirements for water resources protection under Chapter 19.

- (e) *That any documents showing the ownership and method of assuring perpetual maintenance of any areas intended to be used for recreational or other common or quasi-public purposes are adequate and sufficient.*

CSAAC has committed as a binding element of its DPA to perpetually maintain all areas of the property that are intended for common and/or quasi-public purposes unless or until such areas are dedicated to the East Village Homeowners Association or Montgomery Village Foundation. CSAAC has also provided written assurances that any documents used to carry out the intended dedication will include a commitment by the entity receiving title to the property to maintain the property in perpetuity.

### **C. Public Interest**

Once the threshold standards of Code § 59-D-1.61 are addressed, it is also necessary to determine whether there is a sufficient relationship to the public interest so as to justify a *de facto* rezoning. Technical compliance with the threshold standards permits approval of the DPA, but does not compel it. A further determination must be made that the rezoning is in the overall public interest, in

keeping with the broad legislative standard imposed on all District Council zoning actions by the enabling law. *See* Art. 28, Md. Code. Ann. § 7-110 (1997 Repl. Vol.)

In the case at hand, the record contains ample evidence that approval of the requested DPA would be in the public interest. The proposed development conforms with the planning objectives indicated by the Master Plan and the recommendations of the Planning Board and Technical Staff. It would have no adverse impact on public facilities. Moreover, it would enhance the aesthetic environment and recreational opportunities available to area residents. In addition, it would facilitate the provision of vital social services that help children and adults with autism to reach their full potential, which is clearly a public good.

#### ***D. Summary of Conclusions***

Based on the foregoing and after a thorough review of the entire record, we make the following conclusions:

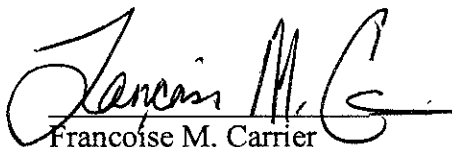
1. That the requested DPA complies with the requirements of the Town Sector Zone;
2. That the requested DPA satisfies the findings required by §59-D-1.61; and
3. That the requested DPA bears sufficient relationship to the public interest to justify its approval.

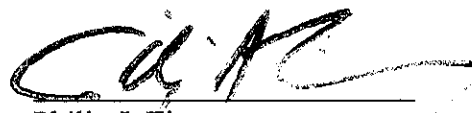
#### **VI. RECOMMENDATIONS**

Based on the foregoing analysis, we recommend that DPA 01-04 be approved, with the proviso that the applicant must submit the DPA for certification under the provisions of Code § 59-D-1.64 within ten days of the District Council action.

Dated: December 5, 2001

Respectfully submitted,

  
Françoise M. Carrier  
Hearing Examiner

  
Philip J. Tierney  
Hearing Examiner